

XLINKS' MOROCCO-UK POWER PROJECT

Explanatory Memorandum

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1 INTRODUCTION

1.1 Purpose of the Explanatory Memorandum

1.1.1 This Explanatory Memorandum explains the purpose and effect of each Article of, and the Schedules to, the draft Xlinks' Morocco-UK Power Project Order ("the Order"), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended).

1.1.2 This Explanatory Memorandum is intended to assist the Examining Authority, Interested Parties and the Secretary of State in understanding the provisions, rights and powers sought within the Order.

1.1.3 In particular, it sets out, (in accordance with the Planning Inspectorate's Advice Note 15: Drafting Development Consent Orders):

- (a) the source of the provision within the Order (whether it is bespoke or based on a made Order);
- (b) the section/Schedule of the Planning Act 2008 (the "Act") under which it is made; and
- (c) the reasons why the Article is both relevant to the authorised development and also considered important and/or necessary to the delivery of the same.

1.1.4 This Explanatory Memorandum should be read alongside the draft Order (document reference 3.1) and the documentation submitted as part of the Application.

1.1.5 Terms defined in this Explanatory Memorandum follow the definitions within the Order unless specified otherwise.

1.2 Genesis of the Order

1.2.1 The Order is based on the General Model Provisions (the "general model provisions") in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "Model Provisions Order 2009"), unless otherwise stated¹. The general model provisions were followed because there are no model provisions for electric lines.

1.2.2 The Localism Act 2011 removed the requirement for the decision maker to have regard to the general model provisions in deciding applications, and with the repeal of section 38 without the Model Provisions Order 2009 being 'saved', they have formally 'lapsed'. Secondary legislation under the Localism Act also removed the requirement of an applicant to explain in the Explanatory Memorandum divergences from the Model Provisions.

1.2.3 Paragraph 1.5 of the Planning Inspectorate's Advice Note 15² states: "[If] a draft DCO includes wording derived from other made DCOs, this should be explained in the Explanatory Memorandum. The Explanatory Memorandum should explain why that particular wording is relevant to the proposed draft DCO, for example detailing what is factually similar for both the relevant consented NSIP and the Proposed Development... the ExA and Secretary of State will need to understand why it is appropriate for the scheme applied for. Any divergence in wording from the consented DCO drafting should also be explained. Note, though, that policy can change and develop."

¹ Although the Model Provisions Order 2009 lapsed on the repeal of the enabling power in section 38 of the Planning Act, and the Planning Inspectorate's Advice Note 15 (published in July 2018) removed the requirement to append to the Explanatory Memorandum a comparison of the draft DCO showing departures from the model provisions, the model provisions continue to provide a helpful guide to drafting.

² Published in July 2018.

- 1.2.4 Where there is a departure from the general model provisions, or an Article is based on other precedent orders, an explanation of the new provision is provided. The Order does not include model provisions which are not relevant or applicable to the proposed development and this Explanatory Memorandum does not seek to explain their omission further.
- 1.2.5 Xlinks' Morocco-UK Power Project (the "Project") has no comparison in terms of other Development Consent Orders ("DCOs") that have been consented and, although not part of an interconnector project, the authorised development permits similar infrastructure within the UK. However, no interconnectors have been granted a DCO at the time of writing and so no approved DCO provisions are directly comparable. The Order has therefore been based on a range of linear energy schemes (both above and below ground infrastructure) as well as offshore wind schemes but has had to mirror approved provisions from a variety of Orders and this is explained throughout.
- 1.2.6 To that end, the Order draws upon precedent in the most recent Development Consent Order granted for high-voltage electricity transmission lines, the National Grid (Bramford to Twinstead Reinforcement) Order 2024. DCOs for other linear schemes, such as the Southampton to London Pipeline Development Consent Order 2020 and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, have also been used given the buried linear nature of those schemes.
- 1.2.7 The authorised development includes the installation of approximately 370 km of subsea High Voltage Direct Current ("HVDC") cables within the UK's Exclusive Economic Zone ("EEZ") and the Order therefore makes provision for a deemed marine licence under section 66(1) of the Marine and Coastal Access Act 2009.
- 1.2.8 In respect of the marine elements of the Project, other DCOs which have marine components, such as the East Anglia ONE North Offshore Wind Farm Development Consent Order 2022, have been taken into account.

2 THE UNDERTAKER

- 2.1 Xlinks 1 Ltd, the "undertaker" for the purposes of the Order, is a limited liability company incorporated in accordance with the laws of England and Wales, with company number 13481017, and whose registered office address is at Kingfisher House, Woodbrook Crescent, Billericay, Essex, United Kingdom, CM12 0EQ.
- 2.2 The undertaker was incorporated with the sole purpose of promoting the Project.
- 2.3 The undertaker is a wholly owned subsidiary of Xlinks First Limited, a company incorporated in accordance with the laws of England and Wales, with company number 13604828, and whose registered office address is at Kingfisher House, Woodbrook Crescent, Billericay, Essex, United Kingdom, CM12 0EQ.
- 2.4 The Funding Statement (document reference 4.2) provides further detail regarding the existing corporate structure of which the undertaker forms part.

3 PURPOSE OF THE ORDER

3.1 Section 35 Direction

- 3.1.1 The undertaker is applying to the Secretary of State for Energy Security and Net Zero ("the Secretary of State") for a development consent order ("DCO") to authorise the construction, operation and maintenance of the elements of the Project which are situated within the boundary of the UK EEZ. These elements are referred to in the DCO application documents as the "Proposed Development" and constitute the "authorised development" for the purposes of the Order.
- 3.1.2 The purpose of the Proposed Development is to connect a renewable energy generation facility and associated cable infrastructure located in Morocco, via offshore HVDC cables

routed through Morocco, Spain, Portugal and France, to the UK's national high voltage electricity transmission network (the "national grid") in order to enable the delivery of an electrical output of up to 3.6 Gigawatts (GW).

3.1.3 Section 35(1) of the 2008 Act provides that the Secretary of State may issue a direction for development to be treated as development for which development consent is required.

3.1.4 On 26 September 2023, the Secretary of State issued a direction pursuant to section 35(1) and 35ZA of the Act confirming that the Proposed Development is nationally significant and that elements of the Proposed Development should be treated as development for which development consent is required. The Order seeks development consent for those elements and all other necessary works which make up the authorised development.

3.2 **Composition of the Proposed Development**

3.2.1 The Proposed Development is split into three distinct geographic elements which comprise the following principal components:

3.2.2 **Onshore Elements:**

- (a) **Converter stations:** two independent converter stations, known as Bipole 1 and Bipole 2, to convert electricity from Direct Current ("DC") to Alternating Current ("AC") before transmission to the national grid;
- (b) **Onshore High Voltage Alternating Current ("HVAC") Cables:** these cables would connect the proposed converter stations to the national grid;
- (c) **Onshore HVDC Cables:** these cables would link the converter stations to the Landfall;
- (d) **Highway improvements:** improvements to the existing road network to facilitate access during construction and operation and maintenance, including road widening, and new or improved junctions;
- (e) **Temporary and permanent utility connections:** temporary and permanent utility connections to the construction compounds and the converter stations; and
- (f) **Permanent utility diversions:** permanent diversion of existing utility services within and adjacent to the converter stations.

3.2.3 **Landfall:**

- (a) **Landfall site:** the site at Cornborough Range where the offshore cables are jointed to the onshore cables. Unless otherwise stated, references to the "Landfall" encompass the entire landfall area between Mean Low Water Springs ("MLWS") and the transition joint bays. This includes the landfall construction compound.

3.2.4 **Offshore Elements:**

- (a) **Offshore HVDC Cables:** subsea HVDC cables located within the UK EEZ which form part of the wider subsea cable link to be installed between the converter stations in Morocco and the Landfall.

3.2.5 The onshore HVDC and HVAC cables would be buried underground for their entire length. It is anticipated that the offshore HVDC cables would be buried in the seabed or laid on the seabed with protection. No HVAC overhead power lines would be installed as part of the Proposed Development.

3.2.6 A more detailed description of the proposed development is provided at Chapter 3 of the Environmental Statement (document reference 6.1).

3.3 **The Authorised Development**

- 3.3.1 Schedule 1 to the Order contains a list of numbered works comprising the authorised development.
- 3.3.2 The undertaker considers that the construction and operation of the two converter stations (being Work No. 1 as described in Schedule 1 to the Order) forms development for which development consent is required as set out in the section 35 direction.
- 3.3.3 The undertaker further considers that Associated Development may include the onshore HVAC cables from the converter site to the national grid, the onshore HVDC cables from the transmission joint bay to the converter stations, the offshore HVDC cables and/or works to install the cables within the UK inshore territorial waters, and other works necessary to facilitate the connection of the project to the national grid.
- 3.3.4 In line with the approach taken in other DCOs, Schedule 1 does not however specify which elements of the authorised development are Associated Development. A similar approach was recently taken by the National Grid (Bramford to Twinstead Reinforcement) Order 2024.
- 3.3.5 The undertaker considers that because it is clear that all elements of the proposals put forward are necessary for the construction and operation and maintenance of the authorised development, it is not material whether they are stated on the face of the Order to be Associated Development.

3.4 **Development authorised by the Order**

- 3.4.1 The authorised development comprises the following elements:
- (a) **Work No. 1 – Converter site** – allows for the construction of the entirety of the converter site to include two converter stations and various ancillary buildings and elements. It also includes for the landscaping around the converter site and relevant accesses within.
 - (b) **Work No. 2 – Gammaton Road and Abbotsham Cross Roundabout (A39) construction compounds** – provides for the two main temporary construction compounds that sit outside the onshore cable corridor, one off Gammaton Road and the other near to the A39 off Abbotsham Cross roundabout.
 - (c) **Work No. 3 – HVDC cable corridor** – this is the main works number for the cable corridor to facilitate both trenched and trenchless installation of HVDC cables and other necessary equipment including fibre optic cables and cable ducts and protection.
 - (d) **Work No. 4 – Landfall site** – this area is included to facilitate the connection of offshore HVDC and fibre optic cables to the onshore HVDC and fibre optic cables and includes the necessary compound to use horizontal directional drilling (“HDD”) and facilitate the connections through transitional joint bays.
 - (e) **Work No. 5 – HVDC cables between Works Nos 4 and 6** – this provides for the HVDC cables (both onshore and offshore) that sit below the cliff and seabed between the points where they connect to the Landfall (Work No. 4) and the point where they enter/exit the seabed (Work No. 6). As these are simply works under land and sea no further elements are required to facilitate surface works in this area.
 - (f) **Work No. 6 – Offshore HVDC cable corridor** – this includes all works necessary for the offshore HDD elements of the cables from Work No. 4 and for the rest of the offshore cable route.

- (g) **Work No. 7 – Highway and access works** – this Work encompasses all areas of temporary and permanent works on highways and for accesses and to include the necessary utility connections and diversions resulting from the works.
- (h) **Work No. 8 – HVAC cable corridor** – this area encompasses the full area owned by National Grid Electricity Transmission PLC to allow for future flexibility in the siting of the new 400kV substation at Alverdiscott. The HVAC cables are included in Work No. 1 as they will come from the converter stations and then go into the proposed substation site.
- (i) **Works No. 9 – Temporary compounds for trenchless installation** – these areas are hatched onto Work No. 3 as they are the proposed locations within which the compounds for HDD and trenchless installations will fall. The Work No. includes all works needed to facilitate these compounds and the works but should also be reviewed alongside Work No.3 due to the necessary overlap and, in some cases, flexibility required for final siting.
- (j) **Work No. 10 – Utility connections and diversions** – this provides for the necessary utility diversions required by the authorised development and includes the ability to connect parts of the onshore works to existing and diverted utilities to allow for the operation of the authorised development.
- (k) **Work No. 11 – HVDC and communication cables** – this work includes areas where there will be no possibility of any trenched installation methods and where no surface works will take place. These areas simply identify where the cables will be drilled or installed under the relevant obstruction be that a watercourse, main river, road or other area to be avoided.
- (l) **Other associated development** – other catch all works are included to ensure that the authorised development can be carried out both onshore and offshore and to ensure there are no impediments to the delivery of the authorised development.

3.5 **Ancillary matters**

- 3.5.1 The Order also contains powers that are ancillary to the authorised development (i.e. provisions not consisting of development) in accordance with section 120(3) of the Act.
- 3.5.2 The main ancillary matter is a power to acquire land or create or interfere with rights compulsorily or by agreement, in accordance with section 120(4) and Part 1, Schedule 5 of the Act. The Order also contains powers of compulsory acquisition for land required for the authorised development, or to facilitate, or that is incidental to the authorised development under section 122 of the Act. It also seeks associated powers including the acquisition of rights necessary to operate and maintain the authorised development. A justification for the powers of compulsory acquisition is set out in the Statement of Reasons which accompanies the application (document reference 4.1).
- 3.5.3 The Order seeks to apply and modify statutory provisions, including in relation to the compulsory acquisition of land. In such cases, sections 117 and 120(5) of the Act require that the Order be made by Statutory Instrument. The Order is, therefore, drafted in that form.
- 3.5.4 Other ancillary matters include the temporary diversion and closure of lengths of existing streets and public rights of way within the vicinity of the authorised development, the temporary use of land for constructing and maintaining the proposed development, the felling or lopping of trees and hedgerows, and the application and disapplication of legislation relating to the proposed development.
- 3.5.5 The undertaker considers that these powers are required for the development to which the Order relates, or are required to facilitate or are incidental to that development. These works apply to the extent that they were assessed in the environmental statement or are needed for emergencies associated with “frac-out” from trenchless installation techniques and HDD.

4 DRAFT ORDER

4.1 Introduction

4.1.1 As noted above the draft Order is broadly based on the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and the Southampton to London Pipeline development Consent Order 2020 but takes elements of other made DCOs.

4.1.2 Due to the elements of offshore works in authorised development, reference has also been made to the provisions in various Orders which consent marine projects, for example the East Anglia ONE North Offshore Windfarm Order 2022 and the Hornsea Project Four Offshore Wind Farm 2023 noting, however, that the only similarities to these projects are the cables in the seabed.

4.1.3 The draft Order is also based on the general model provisions.

4.2 Authorised development

4.2.1 The general model provisions refer to “the authorised project” which comprises of “the authorised development” and “the ancillary works”. The Order does not use the term “ancillary works”, and therefore the Order does not require a definition of “the authorised project” which is distinct from “the authorised development”. Accordingly, references in the model provisions to “the authorised project” have been replaced in the Order by references to “the authorised development”.

4.2.2 The provisions of the draft Order are now explained in sequence, giving reasons for any departure from the precedents noted above.

5 PART 1 – PRELIMINARY

5.1 Preamble

5.1.1 The Order, in common with all statutory instruments, is introduced by a preamble. It is noted that, even though the Order land contains some special category land, the authorised development is not interfering with the rights over the special category land and so no reference to section 132 of the 2008 Act is included. This is because the permanent works will be in the subsoil and no works, except for temporary works in the unlikely event of an emergency, will interfere with the elements that make this land special category land.

5.2 Article 1 (Citation and commencement)

5.2.1 Article 1 sets out the name of the Order, establishing how it may be cited in subsequent legislation. It also states the commencement date of the Order.

5.3 Article 2 (Interpretation)

5.3.1 Article 2(1) defines terms used in the remainder of the Order. The definitions used in the general model provisions are amended and supplemented to reflect the particular circumstances of the project and changes to the Act which have been made since it was originally enacted.

5.3.2 A number of general definitions are added, including:

- (a) abbreviations of legislation including “1967 Act”, “1981 Act”, “1984 Act”, “1989 Act”, “2003 Act”, “2009 Act”, “2009 Regulations”, “2016 Regulations” and “2017 Regulations”, “bank holiday” and “business day”;
- (b) plans or documents specific to the authorised development including “construction traffic management plan”, “environmental statement”, “land plans”, “onshore

construction environmental management plan", "rights of way and streets and access plans", "special category land plans" and "works plans".

- (c) "electric line", "electronic transmission", "footway" and "footpath", "main river", "MMO", "requirements", "traffic" and "traffic authority", "Trinity House".

These definitions are not explained in detail here given their general nature that is clearly set out in each definition.

5.3.3 Certain definitions in the Order have been amended or supplemented to reflect the particular circumstances of the Proposed Development including:

- (a) "apparatus" has the same meaning as in Part 3 of the 1991 Act, however, for the purposes of the Order this has been clarified to include pipelines, aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment (including masts and cables), electricity cabinets and any pipe sleeves, ducts and culverts in which any apparatus is lodged. This broader definition follows the approach in made DCOs, such as the Riverside Energy Park Order 2020, which established that projects will wish to ensure that apparatus key to their specific works and the apparatus of other persons is included.
- (b) "commence" is defined to clarify what material operations must be carried out for elements of the authorised development to be commenced and incorporates the definition of a "material operation" under section 155 of the 2008 Act. The carve out of "pre-commencement operations" enables certain minor set up operations including surveys and investigations, remediation to ground conditions, establishing site facilities, the diversion and laying of services, receiving plant and equipment, forming temporary enclosures and temporary accesses to be carried out before certain requirements set out in Schedule 2 are fully approved. The works that are set out to be "pre-commencement operations" are either de minimis or assessed to have minimal potential for adverse impact. Indeed, they may, in some cases, need to be carried out in order to comply with pre-commencement requirements (for example, to inform assessments and proposals required to be submitted for approval) or to implement environmental mitigation or other measures. It is noted that "pre-commencement" operations will need to be carried out in accordance with relevant outline plans certified as part of the Order to ensure that they are controlled and this is established by requirement 9. This approach to commencement has been adopted in many made DCOs including the National Grid (Bramford to Twinstead Reinforcement) Order 2024 but with changes made to allow the specific pre-commencement operations required for the authorised development. Whilst noting the Planning Inspectorate's comments in Advice Note 15 regarding the use of the term "commence" within draft Orders, the ability to undertake these "pre-commencement operations" ahead of main construction is of importance in the context of the anticipated construction programme for the project. The Environmental Statement does not indicate that the excluded works and operations would be likely to have any significant environmental effects.
- (c) "converter station", "converter site", "HVAC", "HVDC", "horizontal directional drilling" and "HDD", "joint bay", "link box", "transition joint bay" and "trenchless installation techniques" which are all terms used to define key parts of the authorised development that are technical in nature.
- (d) "emergency" this is defined to make sure that there is clarity as to what should be considered an emergency, particularly for the purposes of the wording added to Article 21 (Protective works) to enable the undertaker to access areas of land quickly to be able to prevent or mitigate impacts on health, safety, security or the environment and such a decision is in the undertaker's reasonable opinion. This is reasonable given the undertaker will be carrying out the authorised development and

will therefore be in a position to deal with the emergency quickly if it believes it is reasonably necessary.

- (e) "maintain" is explained to include "inspect, repair, test, adjust, alter, remove, renew, relay, reconstruct, refurbish, landscape, preserve, make safe, dismantle and clear" to ensure that the undertaker has sufficient powers to maintain the authorised development, however, these are also constrained by the reference to the environmental statement and further environmental information to ensure that no works to maintain go beyond what was assessed. This has been adopted in many DCOs including the Southampton to London Pipeline Development Consent Order 2020 and the National Grid (Bramford to Twinstead Reinforcement) Order 2024 but has been amended to allow for works that are specific to the Proposed Development.
- (f) "onshore works" and "offshore works" and "UK marine area" have been included to ensure that the Order has clarity when referring to parts of the authorised development that are either onshore or offshore and relate to the definition of the UK marine area within section 42 of the 2009 Act.
- (g) "table of parameters" gives effect to the parameters for the onshore works that are set out in Schedule 4.
- (h) "undertaker" is defined to include Xlinks 1 Ltd, the applicant, but it also includes a "group company" subject to Secretary of State approval or anyone who has the benefit of the Order in accordance with Article 7. The latter part of this is a normal approach in DCOs and was adopted on the Southampton to London Pipeline Development Consent Order 2020, however, the addition of "group company" is to ensure that the undertaker has flexibility to allow for other group companies to undertake elements of the authorised development if the Secretary of State agrees. This is due to the nature of the Project as a whole that might entail ownership through connected entities. A "group company" is defined to mean the same as set out in section 479(4)(a) of the Companies Act 2006 to give clarity but it is also noted that "a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c) of the Companies Act 2006, as a member of another company even if its shares in that other company are registered in the name of: (a) another person (or its nominee) by way of security or in connection with the taking of security; or (b) its nominee" which is now standard industry wording to address the decision in *Farstad Supply A/S v Enviroco Ltd* [2011] UKSC 16.

5.3.4 Article 2(2) clarifies that "rights over land" include references to do or restrain or to place and maintain, anything in, on or under land or in the airspace above its surface and to any trusts and incidents, including restrictive covenants. It also clarifies that references to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another.

5.3.5 Paragraphs (3) to (7) are provided to give clarity to elements within the Order so that all distances etc are approximate (3), all areas defined in square metres in the book of reference are approximate (4), references to numbered works is a reference to the works set out in Schedule 1 (authorised development) and shown on the works plans, references to any statutory body include successors to that body where relevant (6) and where the term "includes" is used in the Order it is construed to be without limitation (7). Such boilerplate items are included on most made DCOs and have develop on those provided in the general model provisions.

6 **PART 2 – PRINCIPAL POWERS**

6.1 **Article 3 (Development consent etc. granted by the Order)**

6.1.1 Article 3 grants development consent for the authorised development as described in Schedule 1. The development consent is subject to the provisions within the Order including the Requirements set out in Schedule 2.

6.1.2 The wording of Article 3 is similar to the Southampton to London Pipeline Development Consent Order 2020.

6.2 **Article 4 (Authorisation of operation and use)**

6.2.1 This Article confirms that the undertaker is authorised to operate and use the authorised development following its construction, subject to any requirement to obtain any permit, licence or other obligation under any other legislation that may be required from time to time to authorise the operation of any part of the authorised development.

6.3 **Article 5 (Maintenance of the authorised development)**

6.3.1 Article 5(1) sets out the scope within which the undertaker may maintain the authorised development and replicates the wording in Article 3 of the general model provisions. "maintain" is defined in Article 2 and noted above

6.3.2 Text has been added at Article 5(2) to make it clear that the powers conferred by the Article does not:

- (a) authorise the carrying out of any works which are likely to give rise to any materially new or different effects that are not assessed in the environmental statement or in any environmental information supplied under the 2017 Regulations which has been adopted by made DCOs including the Port of Tilbury (Expansion) Order 2019; and
- (b) negate the need for the undertaker to obtain further marine licences for offshore works not covered by the deemed marine licences included in the Order. This approach is preceded in other Orders with a marine licence including the East Anglia Three Offshore Wind Farm Development Consent Order 2017, the Hornsea Three Offshore Wind Farm Development Consent Order 2020 and the East Anglia ONE North Offshore Wind Farm Development Consent Order 2022.

6.4 **Article 6 (parameters)**

6.4.1 Article 6 is specific drafting to frame the areas and parameters within which the authorised development must be carried out.

6.4.2 Paragraph (1)(a) notes that the onshore works must be carried out in accordance with the relevant Work Nos shown on the onshore works plans, the converter site parameter plan, the table of parameters in Schedule 4 and the requirements in Schedule 2.

6.4.3 The offshore works must be carried out in accordance with the offshore works plans, relevant Works Nos and the deemed marine licence.

6.4.4 Paragraph (2) notes that the converter halls must be carried out within the limits of deviation shown on the works plans and the converter site parameter plan and notes that the undertaker may deviate downwards. This is to ensure the maximum height is retained as the worst case but the converter halls can be dug further into the ground if feasible.

6.4.5 Paragraph (3) notes that these parameters may not apply if the relevant planning authority and any consultees are comfortable that a deviation away from the parameters would not give rise to a materially new or materially different environmental effect when compared to the those assessed in the environmental statement. This is considered an appropriate solution to ensure that the undertaker can retain some flexibility in future design and development was long as there are no materially new or different significant effects.

6.5 **Article 7 (Benefit of Order)**

6.5.1 The Order defines the "undertaker" as described above and the Order will have the sole benefit for Xlinks 1 Ltd and any approved group company (as defined above) subject to the rest of Article 7. This flexibility is sought because of the nature of the Project and the fact that

the relevant Xlinks entity may need to change to be able to own and operate the Project as a whole.

- 6.5.2 Article 7 overrides section 156(1) of the Act (as permitted by section 156(2)) to give the benefit of the Order to the undertaker rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the authorised development in an uncoordinated manner, which might be the case if section 156(1) were to remain. This has precedent in a number of DCOs including the Southampton to London Pipeline development Consent Order 2020.
- 6.5.3 Paragraphs (2) to (6) of this Article specify that an undertaker can transfer or temporarily grant the benefit of a provisions of the Order to a statutory undertaker where it is required for it to install, connect remove, alter, divert, replace or protect etc. apparatus comprised in the authorised development. This is necessary because such statutory undertakers may not constitute an “undertaker” because of the exclusion of section 156(1) or because they do not have a formal interest in the land. Secretary of State approval would only be required for the transfer of powers listed at paragraph 6 unless it is a licence-holding statutory undertaker as set out in paragraph 4. These provisions are bespoke to the requirements of this Order but the principles of transferring powers to statutory undertakers is established in The Sizewell C (Nuclear Generating Station) Order 2022.
- 6.5.4 Paragraphs (7) to (10) deal with transfers of the deemed marine licence and detail that Secretary of State approval is required, in consultation with the MMO for any transfers. Such provisions align with similar provisions set out in the Norfolk Vanguard Offshore Wind Farm Order 2022. These provisions also clarify that sections 72(7) and (8) of the 2009 Act do not apply to transfers of the deemed marine licence under paragraph 7. This is because those sections provide that a marine licence may not be transferred except in accordance with the 2009 Act, which would preclude transfer as part of the Order. Paragraph 10 includes clarification that the deemed marine licence may also, as an alternative, be transferred pursuant to a variation notice issued by the MMO under section 72(7) of the 2009 Act, i.e. the Order anticipates an undertaker being able to avail themselves either of the procedures under paragraph 10 or under section 72(7) of the 2009 Act.
- 6.5.5 Paragraphs (11) to (14) are standard DCO provisions permitting transfers of the Order subject to the Secretary of State’s consent.
- 6.5.6 Paragraph (15) provides that where more than one undertaker has the benefit of certain powers over the same land all are entitled to exercise it on its terms as they may agree. This provision anticipates that certain works will be carried out by statutory undertakers rather than Xlinks 1 Ltd but both might need access to the same land using temporary possession, protective works and survey or investigation powers. For example, this is likely at the works comprised in Work No. 1 for the Converter Site.
- 6.5.7 Paragraph (16) makes it clear that no person is liable for a breach of the Order except where they are the person who carried out or caused to carry out the breach and that no person must comply with the Order unless they carried out that part of the Order. This reflects wording in section 161 of the 2008 Act and is similar to an approach within the West Midlands Rail Freight Interchange Order 2020. This seeks to ensure that the delivery of the Proposed Development is not impeded through the threat of joint and several criminal liability.
- 6.6 **Article 8 (Application of the 1990 Act)**
- 6.6.1 Article 8(1) is similar to wording approved in the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and applies to specified works which, though temporary in nature, would be in place for a considerable period of time. The Article applies section 57(2) of the Town and Country Planning Act 1990 to those works to clarify that planning permission is not required for the resumption, at the end of that period, of the purpose for which that land was normally used before the development consent was granted. This aims to avoid disproportionate administrative burden on both landowners and the relevant planning authority once these temporary construction works have ceased.

- 6.6.2 Article 8(2) follows Article 36 of the general model provisions and provides that for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990, the development consent granted by the Order shall be treated as specific planning permission. This means that the land subject to the authorised project will be the operational land of the undertaker as a statutory undertaker and, therefore, is land on which the undertaker is permitted to carry out its undertaking. Statutory undertakers can make an application for planning permission on their operational land under section 266 TCPA 1990 and that application will be dealt with by the Secretary of State and the appropriate Minister. In addition, in respect of operational land, certain permitted development rights may apply. This mirrors the provision National Grid (Bramford to Twinstead Reinforcement) Order 2024 and the Southampton to London Pipeline development Consent Order 2020 as well as Article 36 of the general model provisions.
- 6.6.3 Article 8(4) applies the provisions of sections 91(3A) and (3B) of the 1990 Act as though it were a planning permission for the development of land in England. The effect of this is that if there is a legal challenge to the Order, the time limit in Article 33 (time limit for exercise of authority to acquire land and rights compulsorily or to possess land temporarily) and the time within which the authorised project must be begun (requirement 2) are extended by one year to account for the delay resulting from the legal challenge.
- 6.7 **Article 9 (Application of the Community Infrastructure Levy Regulations 2010)**
- 6.7.1 Article 9 clarifies that, for the purposes of the Community Infrastructure Levy Regulations 2010, any buildings within the authorised development fall within the exemption under regulation 6 and will not to be considered as "development" for the purposes of the Community Infrastructure Levy (CIL).
- 6.7.2 The rationale for this disapplication is that the authorised development is nationally significant and the undertaker will be obliged to provide all of the mitigatory infrastructure to mitigate its effects. Therefore, it would not be justifiable for CIL to be charged in respect of the development on top of this, for further infrastructure to mitigate impacts.
- 6.7.3 Identical wording is included in Article 9 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and Southampton to London Pipeline Development Consent Order 2020 (Article 36(3)).
- 6.8 **Article 10 (Application, exclusion and modification of legislative provisions)**
- 6.8.1 Article 10 derives from Article 6 of the general model provisions and has effect of disapplying general legislative provisions as they would apply but for this article. Section 120(5)(a) provides that statutory provisions may be applied, modified or excluded relating to provisions in the Order and the provisions are set out below and are reasonable.
- 6.8.2 Article 10(1) dis-applies the following legislative provisions:
- (a) Section 23 (prohibition on obstructions, etc. in watercourses) of the Land Drainage Act 1991 to facilitate permitted works to drainage set out in Article 20 (discharge of water);
 - (b) The provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991 to ensure powers in Article 20 (discharge of water) are not impacted by local byelaws to facilitate the delivery of the authorised development;
 - (c) The provisions of any byelaws made under, or having effect as if made under, paragraph 5 of Schedule 25 (byelaw – making powers of the appropriate agency) to the Water Resources Act 1991;
 - (d) Section 42 of the Local Government (Miscellaneous Provisions) Act 1976 (certain future local Acts etc. to be subject to the planning enactments etc. except as otherwise provided) will not apply to the extent that it would make provisions to this Order authorising the authorised development subject to other provisions;

- (e) Regulation 12 (requirement for environmental permit) of the 2016 Regulations in respect of a flood risk activity only as these will be covered in protective provisions agreed with the Environment Agency and set out within Schedule 11 (protective provisions); and
 - (f) The provisions of the Neighbourhood Planning Act 2017 insofar as they relate to temporary possession of land under Article 27 (temporary use of land for carrying out the authorised development) and Article 28 (temporary use of land for maintaining the authorised development) of the Order to ensure the provisions of this Act do not take effect at the expense of the temporary possession powers.
- 6.8.3 Article 10(2) ensures that for the purposes of Regulation 6(1) of the Hedgerows Regulations 1997, removal of hedgerows is permitted under Article 49 (felling or lopping) of the Order. This provision matches the position in Schedule 15 paragraph 1 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and allows the undertaker to deal with hedgerows as permitted by the Order to facilitate the authorised development.
- 6.8.4 Generally, the provisions in this Article are similar to various made DCOs but the actual statutory provisions themselves are included on the basis of relevance to the authorised development and are therefore specific to the Order.
- 6.9 **Article 11 (Planning permission)**
- 6.9.1 This Article seeks to ensure that, if a planning permission is granted to facilitate the construction, use or operation of the authorised development and is not a nationally significant infrastructure project, the implementing of that planning permission does not constitute a breach of the Order.
- 6.9.2 Article 11(2) further confirms that any other planning permissions which conflict with the authorised development can proceed without the risk of enforcement action being taken notwithstanding any incompatibility between the project and the development authorised under that planning permission.
- 6.9.3 Article 11(3) deals with the converse situation and confirms that development within the Order limits which is constructed or used under a standalone planning permission does not prevent the carrying out of any development authorised under the Order.
- 6.9.4 The provisions of Article 11 are considered necessary to address issues arising from the Supreme Court's recent decision in *Hillside Parks Ltd v Snowdonia National Park Authority* 2022 UKSC [30] and this wording has recent precedent in the National Grid (Bramford to Twinstead Reinforcement) Order 2024 which builds on principles from a number of other DCOs.

7 **PART 3 – STREETS**

7.1 **Article 12 (Street works)**

- 7.1.1 This Article confers authority on the undertaker to interfere with and execute works in or under streets within or outside of the Order limits for the purposes of (or for purposes ancillary to) the authorised development. This Article follows Article 8 of general model provisions is broadly followed but no schedule of street works is included to allow for further discussion and agreement on such works as set out in this article.
- 7.1.2 Article 12(1) allows the undertaker (with the consent of the street authority) to enter onto any other street for the purposes of the authorised development and, in this instance, for purposes ancillary to the authorised development, to carry out the authorised street works. The rationale for the inclusion of this ability to carry out street works on streets within or outside the order limits, is to cover off any instance where the undertaker, in delivering the authorised development, finds it necessary to seek to carry out additional street works which are not set out in the schedule and/or are not within the order limits. It allows flexibility for

the street authority to consent to such street works within the scope of the DCO rather than necessitating a separate standalone consent. This allows for such works to be delivered further to the same set of controls as set out within the DCO, given that such street works would be directly linked to the delivery of the authorised development.

- 7.1.3 General model provision 8(2), as reflected in Article 12(3), provides that the authority given by paragraph (1) is a "statutory right" for the purposes of the New Roads and Street Works Act 1991. The authority given by this Article is a statutory right for the purposes of section 48(3) (Streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991, which means that the Order replaces the need to apply for a street works licence under that Act.
- 7.1.4 In consenting the works under paragraph (1) the street authority can attach reasonable conditions to any consent under this article and the undertaker must comply with any reasonable conditions.
- 7.1.5 The provisions of this Article are substantially similar to the principles in the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and Southampton to London Pipeline Development Consent Order 2020 subject to modifications to the list of works that can be carried out to ensure the works specific to the authorised development can be carried out.

7.2 **Article 13 (Application of the Permit Scheme)**

- 7.2.1 This Article deals with the relationship between the Order powers and the traffic management permit schemes operated by Devon County Council including the Devon County Council (Traffic Management) Permit Scheme 2020 ("the permit scheme").
- 7.2.2 Article 13(1) confirms that the permit scheme applies and will be used by the undertaker in connection with the construction and maintenance of the authorised development, subject to the qualifications in paragraphs (2) and (3).
- 7.2.3 Article 13(2)(d) relates to the grant of provisional advance authorisations and clarifies that a permit may not be granted for works in a location and time which one relates to (save for immediate works). It is essential that this provision is included within the Order, as without this the undertaker will not be able to forward plan works. In certain locations, albeit more generally also, controls on when works may be undertaken in the highway, including in proximity to one another, are provided for to minimise environmental impacts. The undertaker therefore must be able to forward plan by reserving road space in this manner and obtaining permits at the appropriate time in closer proximity to works being undertaken, as the permit scheme provides for.
- 7.2.4 Articles 13(3) and (4) address the approval process provided for by the Permit Scheme, which requires a permit application to start again should proposed conditions not be agreed with. The potential consequence of this is that the undertaking of works is delayed.
- 7.2.5 The need to re-apply for a permit and the timescales associated with this could have the potential to delay the delivery of elements of the authorised development by significant periods, potentially years in areas where the available window for undertaking works is significantly constrained, for instance in proximity to schools. To address this significant delivery risk, Articles 13(3) and (4) provide a process for agreement to be reached on the appropriate conditions, ensuring adequate controls are provided for and the authorised development is able to be delivered in a timely manner.
- 7.2.6 Paragraph (8) clarifies that the procedure for appeals in Schedule 3 of the Order is capable of applying to any refusal to grant a permit, or to any decision to grant a permit subject to conditions, but not so as to limit any other appeal mechanism available to the undertaker under the Permit Scheme or otherwise.
- 7.2.7 Similar wording is included in the National Grid (Bramford to Twinstead Reinforcement) Order 2024.

7.3 **Article 14 (Application of 1991 Act)**

- 7.3.1 This Article governs how the 1991 Act will apply to works carried out to a highway in accordance with the Order. It closely matches the approach in Article 12 of the Southampton to London Pipeline development Consent Order 2020 and has been followed by other made DCOs with similar provisions applied and dis-applied by the National Grid (Bramford to Twinstead Reinforcement) Order 2024.

7.4 **Article 15 (Power to alter layout, etc. of streets)**

- 7.4.1 This Article permits the undertaker and anyone else with the benefit of the Order to alter, either permanently or temporarily, the layout of the streets within or without the Order limits subject to the consent of the street authority.
- 7.4.2 In this Order, the rationale for this broader power, which is replicated elsewhere in the Order, comes from section 120(3) of the 2008 Act, which makes it plain that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.
- 7.4.3 Article 15(2) provides that any street altered temporarily under this Article must be restored to the reasonable satisfaction of the street authority.
- 7.4.4 This Article is not included in the general model provisions. This type of provision has precedent in recent linear schemes authorised by the Transport and Works Act 1992³ and is based on the Model Clauses for Tramways contained in Schedule 2 to the Transport and Works (Model Clauses for Railways and Tramways) Order 2006. Similar wording has been included in other development consent order applications for linear projects, such as the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and Southampton to London Pipeline Development Consent Order 2020.
- 7.4.5 This provision is necessary and expedient to give full effect to the power to carry out the authorised development as is provided for under section 120(5) of the Act.

7.5 **Article 16 (Temporary closure, alteration, diversion or restriction of streets and public rights of way)**

- 7.5.1 Article 16 provides for the temporary closure, alteration or diversion of streets or public rights of way shown on the access and rights of way plans or within the Order limits to facilitate the authorised development. This Article mirrors Article 13 of the Southampton to London Pipeline development Consent Order 2020 and is originally adapted from Article 11 of the general model provisions.
- 7.5.2 Paragraph (2) confers a power on the undertaker to use a street or public right of way, which has been temporarily stopped up, altered or diverted, as a temporary working site. This provision has precedent in many made DCOs and transport and works act orders including the Southampton to London Pipeline development Consent Order 2020. It is also considered appropriate and necessary to facilitate construction of the authorised development without the undertaker needing to acquire further interests to accommodate additional construction laydown or compound areas.
- 7.5.3 Paragraph (3) ensures that reasonable access must be provided for pedestrians going to or from premises abutting a street or public right of way impacted by this Article where there is no other reasonable access.
- 7.5.4 Paragraph (4) amends Article 16(3) of the general model provisions to make it clear that the undertaker, when temporarily closing streets or public rights of way, must provide temporary diversions in relation to the streets and public rights of way listed in Part 1 of Schedule 5.

³ See the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072).

- 7.5.5 Paragraph (5) mirrors the Southampton to London Pipeline development Consent Order 2020 provision at Article 13(5) that provides that consent required for closures, alterations or diversions under paragraph (1) except in the case of emergency. This has been added and is considered reasonable to ensure that the undertaker can temporarily close a street to protect the public in the event of an emergency as defined above. This could be particularly relevant for areas of HDD under roads, watercourses and obstruction where the risk of break out is low but the need to clean up would be immediate and so the undertaker must be able to temporarily close the land for the protection of people and the environment and to clean up the break out.
- 7.5.6 To ensure that the undertaker keeps the street authority informed of an event of an emergency paragraph (6) has been added. These additions to the Order are sought to ensure the undertaker can carry out its works responsibly and to ensure it provides for the best protection for people and the environment.
- 7.5.7 Paragraphs (7) and (8) are standard provisions to ensure that a temporary diversion does not have to be a higher standard than the existing street or right of way was and to provide for compensation. These are aligned to the Southampton to London Pipeline development Consent Order 2020 and other made DCOs.
- 7.5.8 Section 120(4) of the 2008 Act permits DCOs to include matters listed in Part 1 of Schedule 5 and paragraph 17 allows for the stopping up or diversion of highways and so it is reasonable to include these provisions.
- 7.6 **Article 17 (Access to works)**
- 7.6.1 This Article is based on Article 12 of the general model provisions and confers upon the undertaker powers for the purposes of the authorised development, and ancillary purposes, to provide or improve both permanent and temporary accesses at the locations specified in Schedule 6 (access to works).
- 7.6.2 Similar powers are conferred in relation to any other locations within the Order limits reasonably required for the authorised development so long as the relevant planning authority consents following consultation with the highway authority (such consent not to be unreasonably withheld or delayed). The rationale for the inclusion of this ability to establish accesses elsewhere within the Order limits is to cover off any instance where the undertaker, in delivering the authorised development, finds it necessary to seek additional accesses which are not set out in the schedule. It allows flexibility for the street authority to consent to such accesses within the scope of the DCO rather than necessitating a separate standalone consent. This allows for such accesses to be delivered further to the same set of controls as set out within the DCO, given that such accesses would be directly linked to the delivery of the authorised development. A similar approach was adopted in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, The East Anglia ONE North Offshore Wind Farm Development Consent Order 2022 and Southampton to London Pipeline Development Consent Order 2020.
- 7.7 **Article 18 (Construction, alteration and maintenance of streets)**
- 7.7.1 Article 18 is similar to the provision in the National Grid (Bramford to Twinstead Reinforcement) Order 2024 which was based on Article 10 of the Transport and Works Act Model Provisions and replicates Article 12 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Development Consent Order 2014.
- 7.7.2 Paragraphs (1) and (2) creates a mechanism for any street constructed or area of street altered under the Order, to be adopted for maintenance at public expense, if it is completed to the reasonable satisfaction of the local highway authority and after a set maintenance period of 12 months and is required to facilitate the adoption of any new or altered street as a result of Article 15 (Power to alter layout, etc. of streets) of the Order.

- 7.7.3 Paragraph (3) creates a mechanism for a footpath or bridleway altered or diverter under this Order along a vehicular private means of access to be maintained (including any culverts or other structures laid under that part of the highway) at the expense of the person or persons with the benefit of the vehicular private means of access, if it is completed to the reasonable satisfaction of the local highway authority.
- 7.7.4 The rest of this Article (paragraphs (4) to (7)) is practically the same as the provisions set out in the National Grid (Bramford to Twinstead Reinforcement) Order 2024 subject to minor clarificatory points and enables the undertaker to dedicate any new land to the highway and to provide a defence against claims for loss or damage resulting from failure to maintain any street under this Article if it can prove that it took all care reasonably necessary in the circumstances to ensure that the relevant part of the street was not dangerous to traffic.
- 7.7.5 This Article is included to provide a process within the Order which addresses the status of new or altered street and ensure that can be included into the street network. However, it will always be open to the undertaker and the street authority to enter into any appropriate agreement further to Article 19 (see below).

7.8 **Article 19 (Agreements with street authorities)**

- 7.8.1 This Article expands upon Article 13 of the general model provisions on which the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and Southampton to London Pipeline Development Consent Order 2020 were based and allows the undertaker and the relevant street authority to enter into agreements about the street works necessitated by the project which would (amongst other matters) allow the local authority to carry out such works under the terms of that agreement.
- 7.8.2 Paragraph (1) sets out the key elements that the undertaker and street authority may enter agreements in relation to but also includes a necessary catch all to ensure that all street works can be covered in an agreement.
- 7.8.3 Paragraph (2) sets a scope for what the agreement may contain and again allows for a broad scope on the terms.
- 7.8.4 It is considered that this Article is important to allow the undertaker and relevant street authority to agree terms that would usually be agreed under sections 38 and/or section 278 Highways Act 1980 as those powers do not relate to powers under a DCO.

8 **PART 4 – SUPPLEMENTAL POWERS**

8.1 **Article 20 (Discharge of water)**

- 8.1.1 This Article provides that the undertaker is entitled to discharge water into a sewer or watercourse subject to the consent of the owner of the sewer or watercourse. Reasonable terms and conditions may be imposed on the undertaker by the relevant owner.
- 8.1.2 The key provisions in the Article closely mirror the position in Article 18 of the Southampton to London Pipeline development Consent Order 2020 and the National Grid (Bramford to Twinstead Reinforcement) Order 2024. However, it is noted that the Secretary of State removed the wording “but [such approval] must not be unreasonably withheld or delayed” in paragraphs (3) and (4). It is considered reasonable to include this wording within the Order to ensure the undertaker has certainty with regards to the consents and to ensure appropriate delivery of the discharge works.
- 8.1.3 Paragraph (7) is included to ensure that the DCO does not override the legislative position in regulation 12(1)(b) of the 2016 Regulations in respect of a water discharge or groundwater activity.

8.2 **Article 21 (Protective works)**

- 8.2.1 Article 21 permits protective works to be carried out to land, buildings, structures, apparatus or equipment, within the Order limits or which may be affected by the authorised development. 14 days' notice must be given to the owner except in the case of emergency, and the owner can refer the matter to arbitration by serving a counter-notice.
- 8.2.2 Rights under this Article exist until five years after the relevant part of the project comes into operation. There is an entitlement to compensation both in relation to loss or damage caused by the undertaker in carrying out the protective works and where, within a specified period, the protective works are shown not to be sufficient. Article 22 is a provision relating to, or to matters ancillary to, the proposed development within section 120(3) of the 2008 Act. Further Section 120(4) of the 2008 Act permits DCOs to include matters listed in Part 1 of Schedule 5 and paragraph 11 notes that the protection of property or interests of any person may be included.
- 8.2.3 This provision is required because of the linear nature of the authorised development and the potential impacts on land. This will help mitigate unforeseen impacts from the carrying out of works in the authorised development and to help delivery of a development of national significance. The Article is based on Article 15 of the general model provisions and subject to the addition below directly matches the provision approved most recently in the National Grid (Bramford to Twinstead Reinforcement) Order 2024.
- 8.2.4 The only addition to the National Grid (Bramford to Twinstead Reinforcement) Order 2024 approved provisions is to include paragraph (12)(c) which includes "any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk to such operation being disrupted" within the definition of "protective works". This is reasonable to include to allow the undertaker to ensure that the authorised development can be protected and operate in a safe manner free from disruption. This additional limb has been approved in made DCOs including the Lake Lothing (Lowestoft) Third Crossing Order 2020.

8.3 **Article 22 (Authority to survey and investigate the land)**

- 8.3.1 This Article allows the undertaker to enter land within the Order limits or land outside of the Order limits which may be affected by the authorised development, to survey, monitor or investigate the land. It includes the power to make trial holes, boreholes, excavations and/or take horizontal cores (e.g. inclined boreholes for the purpose of geological fault modelling), carry out ecological or archaeological investigations or monitoring, and to use and leave apparatus (including attached to buoys) on the land for these purposes. The undertaker must give 14 days' notice to owners and occupiers of the land. Where loss or damage results from the exercise of this power compensation may be payable. The undertaker may not make trial holes etc. in a highway or street except with the consent of the relevant highway or street authority such consent not to be unreasonably withheld or delayed (paragraph (5)).
- 8.3.2 Paragraph (1)(b) permits the undertaker to survey or investigate land or buildings to understand the impacts of the authorised development or to enable the authorised development. (1)(e) has also been recently included on made DCOs to allow equipment to be left on land to facilitate the surveys and investigations.
- 8.3.3 This power is reasonable to include so that the undertaker can carry out surveys and investigations to assist in the construction and maintenance of the authorised development and to avoid or reduce its impacts. This provision matches the provisions within the National Grid (Bramford to Twinstead Reinforcement) Order 2024 subject to the addition of "but such consent must not be unreasonably withheld or delayed" in paragraph (5). Such inclusion is considered reasonable to give certainty to the undertaker of the ability to survey streets or highways if required.
- 8.3.4 These provisions build on powers to survey land within section 53 of the Planning Act 2008, subject to Secretary of State approval.

- 8.3.5 Paragraph (4) ensures that the undertaker, or the person entering onto the land on its behalf, must provide evidence of authority and details of the purpose for entering. The person carrying out the works can take such vehicles and equipment as are necessary to undertake the survey or investigatory works.

8.4 **Article 23 (Removal of human remains)**

- 8.4.1 This Article is based on Article 17 of the general model provisions, Article 37 of the Southampton to London Pipeline Development Consent Order 2020 and Article 23 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. It requires the undertaker, before it carries out any development or works which will or may disturb any human remains, to remove those remains. Before removing any human remains, the undertaker is required to publish notice of its intention to do so. Notice is also required to be displayed near the site.
- 8.4.2 Any relative or personal representative of any deceased person whose remains are proposed to be removed may, at any time within 56 days of first publication of a notice by the undertaker, give notice to the undertaker of their intention to undertake the removal of the remains themselves and arrange for those remains to be re-interred or cremated. The undertaker will be responsible for the reasonable costs incurred in responding to the undertakers notice and the reasonable costs of re-interring or cremating the remains.
- 8.4.3 In the event that such relative or personal representative does not remove the remains, the undertaker is required to comply with any reasonable request the relative or personal representative may make in relation to the removal and re-interment or cremation of the remains.
- 8.4.4 This Article departs from general model provisions in that paragraph (12) excludes the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and that no relative or personal representative of the deceased is likely to object to their removal. This approach has precedent in the Crossrail Act 2008.
- 8.4.5 Paragraph (13) provides a mechanism for removal of remains to which paragraph (12) applies.
- 8.4.6 In addition, paragraph (19) applies to this Order, sections 238 and 239 of the 1990 Act, which ordinarily allow the use of consecrated land or burial grounds in accordance with a planning permission notwithstanding ecclesiastical law, so that land acquired for the authorised development or temporarily used or in relation to which rights are acquired, has the same benefit of those 1990 Act sections as it would have done if the Order had been a planning permission. It is considered appropriate to include it in this Order, given the nature of the underground (cable) works and similar provisions are included in other made Orders including the Southampton to London Pipeline Development Consent Order 2020.
- 8.4.7 Taken together, the effect of Article 23 is to replace existing and displaced regimes regulating the removal of human remains and consolidate the applicable provisions in a single Article in this Order. It is required by the undertaker to ensure that human remains are recovered appropriately without causing unacceptable delay to the implementation of this project. Similar provision is made in a number of DCOs, including the M3 Junction 9 Development Consent Order 2024, the Medworth Energy from Waste Combined Heat and Power Facility Order 2024, the A12 Chelmsford to A12 Widening Development Consent Order 2024, and the Southampton to London Pipeline Development Consent Order 2020.

9 **PART 5 – POWERS OF ACQUISITION AND POSSESSION OF LAND**

- 9.1 Section 120(3) and (4) and paragraphs 1 and 2 of Schedule 5 to the 2008 Act permit a DCO to include powers to acquire land and create, suspend, extinguish or interfere with rights over land by agreement or compulsorily. Part 5 includes the provisions relating to the compulsory purchase of land and rights, including restrictive covenants and the below sections provide the justification for these powers. Section 122 of the 2008 Act further provide for the inclusion

of compulsory acquisition powers subject to the conditions within Section 122(2) and (3). The Statement of Reasons (document reference 4.1) provides further detail and justification in relation to the powers sought and the justification for seeking those powers.

9.2 Article 24 (Compulsory acquisition of land)

- 9.2.1 This Article authorises the compulsory acquisition of so much of the Order land listed in the book of reference and shown on the land plans as is required for the construction, operation or maintenance of the authorised development or is incidental to it or necessary to facilitate it and then use it for the purposes authorised by the Order or for any other purposes in connection with or ancillary to the construction, operation or maintenance of the authorised development.
- 9.2.2 This Article is subject to Article 25 (compulsory acquisition of rights and restrictive covenants), Article 26 (acquisition of subsoil or airspace only), Article 27 (temporary use of land for carrying out the authorised development), Article 29 (use of subsoil under or airspace over streets), Article 33 (time limit for exercise of authority to acquire land compulsorily) and Article 40 (Crown rights) as set out below.
- 9.2.3 The land to be acquired under the Order is coloured pink on the land plans (document reference 2.2).
- 9.2.4 This approach including the addition of (1)(b) to ensure the use of the land can be used for the authorised development is taken from the Sizewell C (Nuclear Generating Station) Order 2022.

9.3 Article 25 (Compulsory acquisition of rights and restrictive covenants)

- 9.3.1 This Article allows the undertaker to acquire rights and impose restrictive covenants over the Order land and includes the ability to create new rights to facilitate the authorised development as described in the book of reference. The land on which rights and restrictions can be acquired and created is coloured blue on the land plans (document reference 2.2).
- 9.3.2 Paragraph (3) and (4) link to Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) which amends the 1965 Act and ensures that where the undertaker is only acquiring rights over land or imposing a restriction on that land, it shall not be obliged to acquire any greater interest in that land amongst other changes. These amendments do not affect the entitlement to compensation. These provisions are included in many made DCOs including the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and the Southampton to London Pipeline Development Consent Order 2020.
- 9.3.3 Paragraph (5) clarifies that acquisition of rights is subject to Article 40 (Crown rights).
- 9.3.4 The ability for the undertaker to acquire rights and impose restrictions is considered appropriate in the context of a linear scheme as it would be disproportionate to acquire freehold strata of land which would restrict the returning of the land to its existing use once the construction is complete. Further, it is proportionate to include the ability to impose restrictive covenants on the areas where rights are acquired to ensure that adequate protection is given to the authorised development as a predominantly buried asset. The ability to acquire rights allows the undertaker to reduce the area of land acquired for the authorised development which is a more reasonable use of compulsory acquisition powers.

9.4 Article 26 (Acquisition of subsoil or airspace only)

- 9.4.1 This Article allows the undertaker to acquire land or rights lower than ground level or airspace above ground level, rather than having to acquire all of the land or rights over all of the land. The Article is similar to the general model provision (Article 24) except that it has been extended to include airspace, as well as subsoil and is nearly identical to the power contained in many made DCOs including the National Grid (Bramford to Twinstead Reinforcement) Order

2024, The East Anglia ONE North Offshore Wind Farm Order 2022 (Article 24), the Southampton to London Pipeline Development consent Order 2020 (Article 28).

- 9.4.2 The authorised development will require subsoil only rights where it is drilling under roads, watercourses and other obstructions to avoid surface level impacts on those obstructions and to avoid including rights over special category land. For elements of the Abnormal Indivisible Loads oversailing rights in the airspace are proposed to allow for the transfer of the relevant kit from one vehicle to another. These elements are therefore included to limit the extent of the compulsory acquisition powers to a sensible extent.

9.5 Article 27 (Temporary use of land for carrying out the authorised development)

- 9.5.1 This Article permits the undertaker to take temporary possession of the areas of land in Schedule 8 (land of which only temporary possession may be taken) and any other Order land where a notice of entry has not been served. This follows the principle of general model provision 28 but includes the wider wording relating to other Order land ((1)(a)(ii)) as included in many made DCOs and the provisions closely match the National Grid (Bramford to Twinstead Reinforcement) Order 2024. The rest of paragraph (1) sets out what the undertaker can do with the land and what limitations there are on those powers. The list includes the ability to carry out necessary mitigation works pursuant to the Requirements in Schedule 2. All of these powers must be in connection with the carrying out of the authorised development.
- 9.5.2 The undertaker is required to give landowners 14 days' notice before entering on and taking temporary possession of land which is the standard timeframe as set out in the general model provisions. This is considered a reasonable time frame and is proportionate in the context of the need to carry out the authorised development.
- 9.5.3 Paragraph (3) details the time limits by when temporary powers under this Article must end unless agreed otherwise with the landowner. Paragraph (4) requires the undertaker to give notice of the completion of the works for which temporary possession is taken which must be within 28 days.
- 9.5.4 Paragraph (5) frames how the land should be handed back and that it should be restored to the reasonable satisfaction of the landowners subject to the exclusions from sub-paragraphs (a) to (k). These have been included to deal with the likely works required by the authorised development including retaining the apparatus of statutory undertakers, dealing with mitigation works amongst other exclusions. It is also noted that the undertaker could not be required to undertake works that would put it in breach of the Order.
- 9.5.5 Paragraph (6) ensures that a dispute as to the restoration of land does not prevent the handing back of the land to ensure timely return of the land to the landowner.
- 9.5.6 Paragraphs (7) to (9) cover compensation provisions to ensure that owners and occupiers of land are compensated and that provisions for disputes are determined under the 1961 Act.
- 9.5.7 Paragraphs (10) to (12) mirror provisions in other made DCOs including Article 30 of the Southampton to London Pipeline Development consent Order 2020 and ensure that the undertaker is not forced to acquire any interests in the land temporarily possessed (10), allows an enforcement mechanism if entry onto land is refused (11) and clarifies that temporary possession can be taken more than once (12).

9.6 Article 28 (Temporary use of land for maintaining authorised development)

- 9.6.1 This Article permits the taking temporary possession of land within the Order limits (except for houses, gardens and any other building for the time being occupied) reasonably required to maintain the authorised development. At least 28 days' notice must be given (save in emergencies), and compensation must be paid for any loss or damage. The maintenance period is set out in paragraph (12) which lasts for five years beginning with the date on which the authorised development is brought into operational use or, where it relates to the

replacement of landscape planting, five years from the completion of the landscape planting or replacement.

9.6.2 This Article follows Article 29 of the general model provisions save that paragraph (1)(c) extends the model provisions to include a right to enter on to the land for the purpose of gaining access to maintain the authorised development (which compliments the maintenance powers set out in paragraph (1)(a)). In addition, a provision removing the need for 28 days' notice in emergency situations has been added at paragraph (11).

9.6.3 Similar wording is included in the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and the Southampton to London Pipeline Development consent Order 2020 and the power is necessary to ensure the undertaker can temporarily access land to maintain the authorised development once built.

9.7 **Article 29 (Use of subsoil under or airspace over streets)**

9.7.1 This Article provides that subsoil under streets within the Order limits may be used without a requirement to acquire that subsoil. This power broadly reflects Article 27 of the general model provisions but includes reference to purposes ancillary to the authorised development which is identical to the wording recently approved in the National Grid (Bramford to Twinstead Reinforcement) Order 2024. Any person who suffers losses as a result of the exercise of this power may receive compensation.

9.8 **Article 30 (Disregard of certain interests and improvements)**

9.8.1 This Article is not contained in the general model provisions but replicates Article 30 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024. It has origins within Transport and Works Act Model Provisions and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

9.8.2 It sets out that the Tribunal must not take into account of interests or enhancements of land where those elements were created or undertaken to increase compensation when assessing compensation payable under the Order. This reflects wording in Section 4 (assessment of compensation) of the Acquisition of Land Act 1981 and is necessary because this Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and neither the Act nor the general model provisions apply Section 1 of this Act to the draft Order. This complies with section 126 of the 2008 Act as it does not seek to modify or exclude provisions relating to compulsory purchase compensation.

9.9 **Article 31 (Set-off for enhancement in value of retained land)**

9.9.1 This Article is not contained in the general model provisions but follows Article 27 of the Transport and Works Act Order Model Provisions and replicates Article 30 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024.

9.9.2 Similarly to the Article above it provides clarity as in relation to the assessment of compensation whereby the Tribunal shall set off any increase in value of any contiguous or adjacent land against the value of the land or new rights acquired arising out of construction of the authorised development.

9.9.3 As above this complies with section 126(2) of the 2008 Act because it does not modify existing provisions relating to compulsory purchase compensation. The principle in this Article is established in section 7 of the 1961 Act (effect of certain actual or prospective development of adjacent land in same ownership), which needs to be applied.

9.10 **Article 32 (Compulsory acquisition of land - incorporation of the mineral code)**

9.10.1 This Article incorporates Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 so that the undertaker is prevented from acquiring the rights to any mines and minerals underneath the land or rights acquired unless expressly purchased. Mines and minerals

owners can still work the mines subject to restrictions set out in the above Act. Article 19 of the general model provisions includes this power and similar wording is included in Article 23 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and Article 22 of the Southampton to London Pipeline Development Consent Order 2020.

- 9.10.2 Section 120(5)(a) of the 2008 Act allows the application of a statutory provision and this provision is considered reasonable to provide protection for the buried cable from mining activities.

9.11 **Article 33 (Time limit for exercise of authority to acquire land compulsorily)**

- 9.11.1 The undertaker has seven years from the date the Order comes into force to issue 'notices to treat' or execute a 'general vesting declaration' to acquire the land and rights through its compulsory purchase powers. The applicant is seeking a longer time limit than the period as set out within Article 20 of the general model provisions and as provided for within The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. These powers are sought to ensure that the authorised development can be constructed using temporary possession powers and then using the final as built cable corridor to form the rights corridor. In this way it should limit the area subject to compulsory purchase and in doing so reduce the impact on land. The Thames Utilities Limited (Thames Tideway Tunnel) Order 2014 sought 10 years to allow the construction and then precise acquisition to follow. Section 154 (3)(b) allows a longer period than 5 years to be included within the Order.

- 9.11.2 Paragraph (2) also places the same time limit on the temporary use of land for the carrying out of the authorised development except that the undertaker can remain in possession of the land it is already in temporary possession of.

- 9.11.3 The principle of this Article mirrors provisions in many made DCOs including Article 24 of the Southampton to London Pipeline Development Consent Order 2020.

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

- 9.12.1 This provision follows general model provision 26 and is identical to Article 33 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024. The power enables the acquisition of a part, rather than the whole of, properties subject to compulsory acquisition. A relevant owner can seek to require the whole of the land to be taken subject to the procedure within the Article and any disputes will be determined by the Tribunal. The provision acts as a substitute for section 8(1) and Schedule 2A of the Compulsory Purchase Act 1965.

9.13 **Article 35 (Application of the 1981 Act)**

- 9.13.1 In applying the 1981 Act with minor modifications this Article provides the undertaker with the choice of compulsory purchase procedures, between the notice to treat procedure or the general vesting declaration procedure set out in the 1981 Act. A general vesting declaration allows for title to pass to the acquiring body more quickly than under the notice to treat procedure and can enable the acquisition of land and rights over several plots of land at once and is therefore more efficient than the notice to treat procedure.

- 9.13.2 Certain specific provisions in the 1981 Act are modified to ensure consistency with the provisions in the Order which relate to the exercise of compulsory purchase powers. It is important to provide clarity within the Order as to the procedures in place in respect of the authorised development.

- 9.13.3 The wording is similar to that set out in both the National Grid (Bramford to Twinstead Reinforcement) Order 2024 (Article 34) and the Southampton to London Pipeline Development Consent Order 2020 (Article 27) with minor wording included to account for changes made by section 185 of the Levelling-Up and Regeneration Act 2023.

- 9.13.4 Amongst other minor modifications the Article ensures the time limits for the use of the general vesting declaration procedure align with the Order time limits and these changes are permitted by section 120(5)(a) of the 2008 Act which provides for the modification of a statutory provision.
- 9.14 **Article 36 (Application of Part 1 of the 1965 Act)**
- 9.14.1 This Article applies and modifies Part 1 of the 1965 Act to ensure consistency between the Order and the 1965 Act. These modifications are contained in many made DCOs and are almost identical to those approved within Article 35 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 with minor wording included to account for changes made by section 185 of the Levelling-Up and Regeneration Act 2023.
- 9.14.2 As above the 2008 Act allows for the modifications under section 120(5)(a) and these changes are considered to be in accordance with section 126(2) of the 2008 Act because they only seek to modify the provisions in the 1965 Act to ensure they apply to compulsory acquisition powers within the Order.
- 9.15 **Article 37 (Extinguishment and suspension of private rights)**
- 9.15.1 Article 37 provides for the extinguishment or suspension of private rights and restrictive covenants over land and rights that are subject to compulsory acquisition. In the instance of rights paragraph (3) makes clear that the rights and restrictions on land are only extinguished or suspended if the continuance of the existing right or restriction would be inconsistent with the right acquired or a breach of a restriction. These powers are included in many made DCOs and are very closely aligned to those in Article 36 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024. It is noted that paragraph (3)(c) is added to the National Grid (Bramford to Twinstead Reinforcement) Order 2024 provision to ensure that the interruption of rights begin on the commencement of any activity permitted by the Order which might interfere with those rights or restrictions.
- 9.15.2 These powers also apply to any land or rights that the undertaker reaches agreement on to ensure that nothing on the land or rights acquired prevents the undertaker from carrying out and operating the authorised development. It effectively clears title. Where rights only are acquired, the position is proportionate in that only rights that are inconsistent with the rights acquired for the Order cease to have effect.
- 9.15.3 Where temporary possession of land is taken the rights or restrictive covenants on land are suspended and unenforceable for the duration of the occupation if their continuation would be inconsistent with the exercise of the powers under the Order.
- 9.15.4 Paragraph (5) to (8) provide for compensation to persons that suffer loss due to the extinguishment or suspension of a private right or restriction and instances where the rights are preserved (e.g. for statutory undertakers) where notice is given to that effect or where an agreement is made in relation to the existing right or restriction. This allows a practical and proportionate application of this power so that it can be flexible and limit the unnecessary extinguishment of a right or restriction.
- 9.15.5 These provisions and paragraph (9) are similar to the provisions within the Southampton to London Pipeline Development Consent Order 2020.
- 9.16 **Article 38 (Power to override easements and other rights)**
- 9.16.1 This Article provides that interference with rights or breaches of restrictions are authorised where the interference or breach is caused by “authorised activities” carried out in accordance with the Order. This closely follows the position in the National Grid (Bramford to Twinstead Reinforcement) Order 2024 with the inclusion of paragraphs (7) and (8) to allow for notice to be given or agreement reached to ensure that the relevant land interest is not overridden and ensures a flexible and proportionate approach.

- 9.16.2 This Article reflects powers in section 203 of the 2016 Act and these powers enable the undertaker the ability to give full effect to the authorised development by allowing interference with any trust, incident, easement, wayleave, liberty, privilege, right or advantage annexed to land (including any land forming part of a common, open space or fuel or field garden allotment) and adversely affecting other land, including any natural right to support, and including restrictions as to the user of land arising by virtue of a contract.
- 9.16.3 This reflects sections 120(3) and (4) and item 2 of Part 1 of Schedule 5 to the 2008 Act which confirm that the Order may make such provision relating to the compulsory suspension, extinguishment or interference with interests in or rights over land.
- 9.16.4 Compensation is payable where an interest, right or restriction is overridden (paragraph (4)).
- 9.17 **Article 39 (Statutory authority to override easements and other rights)**
- 9.17.1 Section 158 of the 2008 Act provides that, in carrying out or authorised development or doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural rights of support, or breach any restriction as to user of land arising by virtue of contract. Article 39 seeks to ensure this is established for the avoidance of doubt and to set out what interests and rights the provision applies to. This is necessary and appropriate to address the types of interest/land that the undertaker may encounter on a linear scheme of this nature.
- 9.17.2 It notes that compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach by virtue of section 152 of the 2008 Act.
- 9.17.3 Similar wording appears in the Hinkley Point C (Nuclear Generating Station) Order 2013 (Article 25) and more recently in the National Grid (Bramford to Twinstead Reinforcement) Order 2024.
- 9.18 **Article 40 (Crown Rights)**
- 9.18.1 Section 135(1) of the 2008 Act provides that DCOs may include provisions relating to the compulsory purchase of an interest in Crown land only if the Crown does not hold the interest to be acquired and the Crown consents to the acquisition. Section 135(2) of the 2008 Act provides that DCOs may include other provisions in relation to Crown land if the appropriate Crown authority consents to its inclusion.
- 9.18.2 This Article makes it clear that the Order does not prejudice any estate, right, power, privilege, authority or exemption of the Crown and does not authorise the undertaker to take or interfere with any land or rights belonging to the Crown or a government department without written consent. Consent may be given unconditionally or subject to conditions. This is an important and required provision as there are elements of Crown land (onshore and offshore) within the Order limits. We understand this provision is the Crown's preferred formulation on the face of the Order and it was adopted in the Port of Tilbury (Expansion) Order 2019.
- 9.19 **Article 41 (Saving provisions for Trinity House)**
- 9.19.1 This Article is a model provision for harbours that is commonly included in electricity projects with an offshore element. It is intended to provide protection to Trinity House. The provision is identical to the provisions contained in the East Anglia TWO and One North Offshore Windfarm Orders 2022 and Hornsea Project Four Offshore Wind Farm Order 2022 and has been confirmed as the appropriate protection in discussions with Trinity House.
- 9.20 **Article 42 (Special category land)**
- 9.20.1 This Article ensures that any special category land (i.e. land forming part of a common, open space, or fuel or field allotment) within the Order limits will be permanently, or temporarily discharged from all rights, trusts and incidents to which it was previously subject so far as

they are inconsistent with the exercise of the Order rights. A similar provision is contained in the Southampton to London Pipeline Development Consent Order 2020 at Article 33 amongst other made DCOs.

- 9.20.2 It is noted that, whilst special category land is included within the Order, the construction works and permanent rights proposed are unlikely to impact the nature of the land as special category land (as it involves drilling in the subsoil underneath the land and no rights or access at the surface are sought except in the case of an emergency during construction). It is considered then that section 132 of the 2008 Act does not currently apply to the Order given the nature of the works proposed under special category land. However, if it is considered to be engaged, section 132(3) will apply because the subsoil works and rights will not impact the enjoyment or use of the special category land. If access was taken over the areas of special category land under temporary possession powers it would only be to resolve a construction issue (such as drilling break-out) and would not be a permanent surface right such that section 132(4B) of the 2008 Act would apply.
- 9.20.3 This Article is, however, included to ensure that the undertaker is protected in the event that any of the land within the Order limits becomes special category land following the submission of the Order. This is a reasonable and proportionate protection in a rural linear scheme.

9.21 **Article 43 (Statutory undertakers)**

- 9.21.1 This article authorises the undertaker to compulsorily acquire land, extinguish rights of and remove or reposition apparatus belonging to statutory undertakers, and compulsorily acquire new rights over land belonging to statutory undertakers described in the Book of Reference.
- 9.21.2 It departs from the general model provisions in paragraphs (2) to (4), which all relate to either the power in paragraph (1)(b) (extinguishment of rights or removal or repositioning of apparatus belonging to statutory undertakers) or other apparatus diversions. Paragraphs (3) and (4) allow for the notification process set out in the Town and Country Planning Act 1990 (sections 271-274) to apply in other cases. Paragraph (2) caveats (3) and (4).
- 9.21.3 The effect would be such that where the undertaker proposes to extinguish the rights of statutory undertakers, or to remove or reposition their apparatus, and those statutory undertakers do not fall within Article 43(1)(b) (i.e. statutory undertakers' apparatus within the Order limits) then those statutory undertakers would be subject to the provisions of the Town and Country Planning Act 1990, which provides for the extinguishment of the statutory undertakers' rights and include provisions relating to compensation.
- 9.21.4 This Article is very similar to Article 42 of the Thames Utilities Limited (Thames Tideway Tunnel) Order 2014, the only substantive difference being that the Order does not refer to a schedule relating to the protection of statutory undertakers. Article 51 gives effect to Schedule 11 (protective provisions) separately (as explained below).

9.22 **Article 44 (Recovery of costs of new connections)**

- 9.22.1 This Article is identical to Article 43 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and it provides for compensation to be paid to owners or occupiers of property whose supply is affected by the removal of apparatus in accordance with Article 43 (Statutory undertakers).

10 **PART 6 – MISCELLANEOUS AND GENERAL**

10.1 **Article 45 (Deemed marine licence)**

- 10.1.1 This Article provides for a marine licence (the terms of which are set out in Schedule 9 (deemed marine licence) to have been deemed to be granted for the works specified in that Schedule. The works constitute a 'licensable marine activity' for the purposes of the 2009 Act. Section 149A of the 2008 Act permits the inclusion of a deemed marine licence in a DCO and in this instances it covers English waters up to the exclusive economic zone and Section

120(4) of the 2008 Act permits DCOs to include matters listed in Part 1 of Schedule 5 including a deemed marine licence (paragraph 30A).

- 10.1.2 The Article is based on Articles 37 and 38 of the general model provisions but reflects the fact that the marine licence under the 2009 Act has replaced the requirement for consent under section 34 of the Coast Protection Act 1949 and Part 2 of the Food and Environment Protection Act. Schedule 9 (deemed marine licence) sets out the terms of the draft licence. Similar provisions are contained in made DCOs that include offshore elements.

10.2 **Article 46 (Application of landlord and tenant law)**

- 10.2.1 The provision allows the terms of any lease of the authorised development to override statutory provisions relating to landlord and tenant law. It originates from Article 35 of the general model provisions. This Article governs the leasing of land by the undertaker to any other person. This is also identical to Article 44 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024, Article 38 of the Southampton to London Pipeline Development Consent Order 2020 and other made DCOs and is included for the sake of clarity and consistent application to any such leases along the route.

10.3 **Article 47 (Defence to proceedings in respect of statutory nuisance)**

- 10.3.1 Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in statutory nuisance generally. This Article amends the terms of the defence in the case of nuisances which could potentially be engaged as set out in the Statutory Nuisance Statement (document reference 7.6) but, with the proposed mitigation in place, are not expected to give rise to a statutory nuisance for the purposes of section 79(1) of the Environmental Protection Act 1990, being: (a), (d), (e), (fb) (g) and (ga)

- (a) Any premises in such a state as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia raising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.

- 10.3.2 The defence is available if the nuisance relates to the construction or maintenance of the authorised development and is in accordance with (1) any controls imposed by the local authority under the Control of Pollution Act 1974, (2) the construction of the authorised development and is in accordance with the controls and measures relating to noise as described in the plans to be approved under requirements 7 and 8 (including the onshore construction environmental management plan), (3) is a consequence of construction or maintenance and cannot reasonably be avoided, or (4) is a consequence of complying with the Order and cannot reasonably be avoided.

- 10.3.3 The defence is also available if the nuisance is attributable to the use of the project and cannot reasonably be avoided.

- 10.3.4 This Article is based on Article 7 of the general model provisions, with the removal of references to section 65 of the Control of Pollution Act 1974, following its repeal. This provision is appropriate for inclusion in the Order to ensure that nuisance claims are considered in the context of the wider benefits of the authorised development.

- 10.3.5 Section 120(3) of the 2008 Act allows for the inclusion of this Article as this is a provision relating to, or to matters ancillary to, the authorised development within and is a matter specifically identified in paragraph 11 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the exclusion of liability in respect of acts or omissions.
- 10.4 **Article 48 (Traffic regulation)**
- 10.4.1 This Article allows the undertaker to regulate traffic on the roads and to the extent specified in Schedule 10 (traffic regulation orders) or to any other extent that is expedient or necessary, with the consent of the traffic authority, for the construction of the authorised development.
- 10.4.2 The Article is not in the general model provisions but is common in orders granting permission for infrastructure projects. This Article is similar to the provisions in the National Grid (Hinkley Point C Connection Project) Order 2016 (Article 40) and the National Grid (Bramford to Twinstead Reinforcement) Order 2024 (Article 46) but is amended to provide for the specific traffic regulation required for purposes ancillary to the authorised development. This provision and the traffic regulation proposed is necessary to enable the construction and maintenance of the authorised development to be carried out in a manner which is expedient and safe for both contractors and the public.
- 10.4.3 Article 48(6) reinforces the temporary nature of any traffic regulation prohibitions or restrictions permitted to be implemented pursuant to either Article 48(1) or 48(2).
- 10.5 **Article 49 (Felling or lopping)**
- 10.5.1 This Article allows any tree, shrub, shrubbery, hedgerow or important hedgerow that is under or within or near any part of the authorised development to be felled, lopped, pruned, cut, trimmed, coppiced, pollarded, reduced in height or width, or to have its roots cut back, if it is necessary to prevent any obstruction to the construction, operation or maintenance of the project or a danger to anyone constructing, maintaining or operating it. This is necessary so that the authorised development can be brought forward expediently and safely and can be maintained in the same manner.
- 10.5.2 The wording is similar to the key powers approved in Article 47 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 except with the addition of paragraph (2)(c) and (d) to clarify the applicability of statutory provisions to these works. These are included as section 120(5)(a) of the 2008 Act allows the application, modification or exclusion of statutory provisions relating to matters provided for in the Order.
- 10.5.3 Compensation is payable for any loss or damage caused under paragraph (3).
- 10.5.4 Articles 49(6) removes any obligation upon the undertaker to secure any consent to remove hedgerows under the Hedgerows Regulations 1997 and this is included in many made DCOs. Section 120(4) of the 2008 Act permits DCOs to include matters listed in Part 1 of Schedule 5 and paragraph 13 includes the ability to deal with trees and shrubs.
- 10.6 **Article 50 (Trees subject to Tree Preservation Orders)**
- 10.6.1 This Article allows the undertaker to fell or lop trees within the Order limits that are protected by a tree preservation order as long as the undertaker believes it is necessary to prevent the tree obstructing the authorised development or to prevent a danger to persons undertaking the authorised development.
- 10.6.2 It is understood that there are currently no trees protected by tree preservation orders in the Order limits but this provision is considered reasonable to include to ensure that it would apply where trees were protected in the future. Paragraph (2) ensures that the undertaker must get the written approval of the relevant planning authority to undertake the activities. Compensation is also provided for damage arising from these activities.

- 10.6.3 Amendments and disapplication of the key statutory provisions are included as permitted under section 120 of the 2008 Act and in particular section 120(5)(a).
- 10.7 **Article 51 (Protection of interests)**
- 10.7.1 This Article applies Schedule 11 (protective provisions) to give affect to the protections for statutory undertakers whose assets may be affected by the authorised development within the protective provisions. This is a standard provision to ensure the protective provisions apply. Further information relating to the protective provisions is set out below.
- 10.8 **Article 52 (Procedure regarding certain approvals etc.)**
- 10.8.1 This Article frames how applications and approvals within the Order should be dealt with to ensure certainty of decision making for the undertaker and it applies Schedule 3 (procedure regarding certain approvals, etc.). Certain approvals such as those under the protective provisions and in relation to protective works and the protective provisions would not be covered by this Article and Schedule 3.
- 10.8.2 Paragraph (2) allows for details or plans approved in the requirements to be amended by agreement as long as those amendments do not permit development outside the relevant Work No. or give rise to any materially new or materially different significant effects on the environment.
- 10.8.3 These provisions are considered proportionate to ensure that consent is provided to the undertaker without unnecessary delay to enable the prompt implementation of the authorised development and to also provide certainty from the decision makers as to the relevant timescales within which they should respond.
- 10.8.4 The process within Schedule 3 (procedure regarding certain approvals, etc.) is set out in more detail at section 11.3 below.
- 10.8.5 Paragraph (6) allows work done to comply with requirements before the Order is granted to be taken into account when determining compliance with the requirements to ensure the undertaker does not have to repeat work already undertaken. There is no obligation for the authority to take this detail into account until the Order is granted, however, the authority can lawfully do so if it wishes. This is considered prudent to enable sensible early work by the undertaker to ensure requirements can be discharged expeditiously once a DCO is granted. This is a standard approach in made DCOs including the A12 Chelmsford to A120 Widening Development Consent Order 2024 at paragraph 25 of its Schedule 2 (Requirements) and the Boston Alternative Energy Facility Order 2023 at paragraph 31 of Part 2 (Procedure for Discharge of Requirements) of Schedule 2 (Requirements).
- 10.9 **Article 53 (Safeguarding)**
- 10.9.1 Safeguarding provisions originated from Article 52 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and is considered appropriate to provide protection to linear schemes where an undertaker is not acquiring the full land for the authorised development. Recently the National Grid (Bramford to Twinstead Reinforcement) Order 2024 was consented with a safeguarding provision at Article 52 and this provision mirrors that approved wording subject to the removal of paragraph (7) of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 because the Order does not provide for decommissioning.
- 10.9.2 This Article seeks to protect the authorised development from adverse effects of development in the vicinity of the authorised development in order to maintain the operational integrity of the authorised development as a project of national significance. There is no statutory protection to provide a sufficient safeguard to the operational integrity of the authorised development. This is considered necessary to include under section 120(5)(c) of the 2008 Act.

- 10.9.3 It should be noted, however, that the provision does not seek to prevent the grant of a planning permission, simply to ensure that the relevant planning authority consults with the undertaker and so that the undertaker can assess the potential impacts from future development on the authorised development. The relevant local planning authority will then be able to consider engineering evidence as to the likely effect of any new proposed works on the safety and all other parts of the authorised development within the Order limits.
- 10.9.4 Paragraph (6) seeks to protect the requirement to consult through local land charge which is important so that a developer is aware of the need to consult.
- 10.10 **Article 54 (No double recovery)**
- 10.10.1 This provision ensures that compensation is not payable both under this Order and any other enactment, contract or other rule of law or under two or more provisions within the Order. It follows the well-established principle of equivalence that a claimant is compensated for no more and no less than their loss.
- 10.10.2 This provision is well established and is identical to other made DCOS including Article 53 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and Article 47 of the Southampton to London Pipeline Development Consent Order 2020.
- 10.11 **Article 55 (Amendment of local legislation)**
- 10.11.1 This Article seeks to exclude local legislation and byelaws listed in Schedule 12 (amendment to local legislation) and is similar in effect to Article 6 of the general model provisions. The wording in this Article mirrors the wording in Article 55 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 but given the different geographical locations the Schedule contains specific local legislation. The relevant local legislation to be disapplied is set out at section 11.12 below.
- 10.11.2 This is a reasonable and prudent provision to ensure that no local legislation (in this case mostly historical) can prevent the carrying out and operation of the authorised development.
- 10.11.3 Reasonable efforts have been made to identify all relevant local legislation which could affect the authorised development but it would be disproportionate and impracticable to ensure that all such legislation has been identified on a linear project of this scale. This Article therefore applies to any local statutory provision where those provisions are inconsistent with the powers in the Order. It is, therefore, considered proportionate to exclude such legislation which may impede the delivery of the authorised development.
- 10.11.4 Paragraph (4) provides that the undertaker can respond within 14 days of a notice that works done or proposed would amount to a contravention of a statutory provision.
- 10.12 **Article 56 (Certification of documents)**
- 10.12.1 This Article provides that copies of the plans and documents set out in Schedule 13 (certified documents) to the Order must be submitted to the Secretary of State as soon as practicable after the making of the Order to enable the Secretary of State to certify those documents and plans as true copies.
- 10.12.2 This is based on Article 41 of the general model provisions but follows the more recent approach to list out all documents to be certified within a schedule as per the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and the Southampton to London Pipeline Development Consent Order 2020 amongst other made DCOs.
- 10.13 **Article 57 (Service of notices)**
- 10.13.1 This Article sets out how notices to be served under the Order can be served and on whom they should be served. It also allows for service by email if the recipient has given consent to such service, noting that such consent can be revoked.

- 10.13.2 This provision mirrors Article 57 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024, including on emails, and is considered necessary because sections 229 and 230 of the 2008 Act relating to services of notices do not apply to service under a DCO.

10.14 **Article 58 (Arbitration)**

- 10.14.1 This Article provides for differences between parties under the Order to be referred to and settled by a single arbitrator unless the Order sets out another express mechanism (such as the procedure for approvals). The Article is similar to the general model provision with the addition of the Secretary of State as the appropriate body where an arbitrator is not agreed.
- 10.14.2 Additionally, paragraph (2) notes that consents or approvals from the Secretary of State are not subject to arbitration.
- 10.14.3 This reflects recently made DCOs, such as Article 58 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and Article 37 of the East Anglia ONE North Offshore Wind Farm Development Consent Order 2022.

10.15 **Article 59 (Funding)**

- 10.15.1 This Article provides that certain powers of compulsory purchase and temporary use of land should not apply until the undertaker has agreed the form and amount of security with the Secretary of State.
- 10.15.2 This provision is similar to provisions within the East Anglia ONE North Offshore Wind Farm Order 2022 and the Hornsea Four Offshore Wind Farm Order 2023. However, the ability for the Secretary of State to agree that no such security needs to be provided is also included to allow for future changes to the undertaker's financial position to be considered.
- 10.15.3 The form of security must be in place for at least 15 years after the relevant compulsory power is exercised.

11 **SCHEDULES**

11.1 **Schedule 1 (Authorised development)**

- 11.1.1 Schedule 1 sets out what comprises the authorised development by reference to numbered works which should be reviewed alongside the works plans. The key to the works plans shows the relevant colours that link to the numbered work in Schedule 1.
- 11.1.2 As noted above all elements of works needed to facilitate the authorised development are included within Schedule 1 so that all works can be considered as part of the authorised development. Whilst the Secretary of State directed that the converter stations are the element that requires development consent, the undertaker considers that all elements are necessary to facilitate the Proposed Development and can therefore be considered together along with elements of associated development. The detail of each Works No. is set out below.

Work No.1

- 11.1.3 Work No. 1 sets out all elements required to deliver the converter site and is split into two parts.
- 11.1.4 The works listed from sub paragraphs (a) to (n) detail what each converter site is likely to need and includes key buildings, equipment and infrastructure. As there are two converter stations this reflects the fact that the final equipment within each is very similar. This is why the introduction at 1(1) notes that this equipment is for "each converter station".
- 11.1.5 The works listed from (o) to (dd) are all other works, buildings, equipment and elements required to provide the converter site as a whole and this includes spares buildings, landscaping for the site, connections into and out of the converter stations, security buildings,

fences, access roads and anything else required to ensure the converter site can be fully operational and secured.

- 11.1.6 Elements of Work No. 1 are subject to detailed design under requirement 4 (see below).

Work No. 2

- 11.1.7 Work No. 2 provide all works for the two main construction compounds within the Order land. These compounds will sit alongside the cable route to facilitate works along the route.
- 11.1.8 The works included are standard works to allow the compounds to function and act as key hubs for the construction works. All works over this land are temporary in nature but include the ability to undertake environmental mitigation if required.

Work No. 3

- 11.1.9 Work No. 3 is the key work for the majority of the HVDC cable corridor and provides for all necessary works, both temporary and permanent, to facilitate the laying of HVDC cables and fibre optic cables as well as necessary protections.
- 11.1.10 As the undertaker will ensure that route design and best practice construction methods are followed, Work No. 3 allows for both trenched and trenchless drilling techniques to ensure flexibility and to ensure that crossings can be undertaken using best practice construction methods in the least intrusive way where practicable.
- 11.1.11 Temporary facilities such as welfare and security facilities will also be required given the fact that the cables are laid in sections along the route.
- 11.1.12 A temporary construction haul road will also run along the route to facilitate construction vehicle movements.

Work No. 4

- 11.1.13 Work No. 4 is the area where the onshore cables will be connected to the offshore cables through transition joint bays. The works involve the surface works and compound to allow the HDD to drill under Cornborough Range.
- 11.1.14 This works area includes the necessary temporary construction areas including welfare facilities and laydown areas and access works. Work No. 4 is sited to ensure that the compound does not prevent access over the adjacent footpath and South West Coast Path.

Work No. 5

- 11.1.15 Work No. 5 is concerned with the subsoil and sea HVDC and communication cables. The cables are sent through HDD and there are no planned surface works for this Work No. These works are therefore separate to Works Nos 4 and 6 to show that no elements of those works can be undertaken within Work No. 5 and to ensure that the coast, beach and near-shore are protected.

Work No. 6

- 11.1.16 Work No. 6 incorporates all works needed to send or receive the offshore cables via Work No.5 to the landfall via HDD and to construct and lay the HVDC and communication cables in the seabed.
- 11.1.17 HDD works require vessels such as jack-up barges to work on the exit pits from the HDD.
- 11.1.18 Further, all works needed to lay the cables within the UK marine area are included such as the laying, burial and protection of the cables, works to allow burial trials, works to construct

crossing structures over existing marine cables and other works that are necessary to facilitate the offshore cables.

Work No. 7

- 11.1.19 Work No. 7 provides for the key highway works along the onshore route. Sub-paragraphs (a) to (g) refer to specific areas of works including works to facilitate:
- (a) access to the landfall HDD compound and cable route (7(a));
 - (b) temporary access and selective widening of the existing bell mouth junction to the Cornborough Sewage Treatment Works (7(b));
 - (c) realignment of the existing highway junction of A386 and unnamed road between the A386 and Littleham, including widening of the unnamed road and installation of traffic signals for the duration of the associated construction (7(c));
 - (d) selective widenings of the southern side of the Gammaton Road carriageway between Manteo Way and Gammaton Moor Crossroads (7(d));
 - (e) widening of sections of the unnamed road leading from Gammaton Moor associated with any future transformer replacements (7(e));
 - (f) the intermittent laying of a temporary operational access road north of Gammaton Moor that may be required for the replacement of a transformer (7(f)); and
 - (g) temporary construction and operational access road using the existing Cornborough Sewage Treatment Works access road.
- 11.1.20 Sub-paragraphs (h) to (m) then include more general associated works including the ability to remove street furniture, divert and connect utilities and provide vehicular and pedestrian accesses amongst other works.

Work No. 8

- 11.1.21 Work No. 8 allows for the HVAC cables to run from the converter site into the future Alverdiscott substation site and so the area is sufficiently wide to allow for flexibility while National Grid Electricity Transmission PLC plan the future substation. Work No. 1 includes areas for the HVAC cables to run to and so there is no need to overlay the Works Nos on the works plans.

Work No. 9

- 11.1.22 Work No. 9 allows for areas within which trenchless installation or HDD compounds will be established. While Work No. 3 allows similar compounds these are the main areas identified that will require HDD or other trenchless installation. There will be launch pits and receiving pits either side of the section to be crossed.
- 11.1.23 The works include everything needed to facilitate the compounds and are overlaid on Work No. 3 on the works plans to represent the fact that the cables will continuously run through.
- 11.1.24 In some instances the potential area for Work No. 9 is wide but this is simply to allow for future siting to ensure the best location and the size of any compound is constrained by the onshore parameters listed in Schedule 4.

Work No. 10

- 11.1.25 Work No. 10 includes all areas that sit outside of the converter site and cable corridor that are required for utility connections and diversions (both permanent and temporary).

- 11.1.26 Sub-paragraphs (a) to (f) provide for the relevant removal and diversion works to facilitate Work No. 1.
- 11.1.27 Sub-paragraph (g) includes the necessary temporary connections for the construction compounds.
- 11.1.28 Sub-paragraph (h) allows for the permanent low voltage connections for the fibre optic cables within Work No. 3.
- 11.1.29 Sub-paragraph (i) allows for the relevant works for low voltage connections to the landfall compound in Work No. 4.
- 11.1.30 There is a general provision to ensure all other works are permitted to allow these connections and diversions.

Work No. 11

- 11.1.31 Work No. 11 concerns the areas of onshore subsoil cables that run under obstructions that must be crossed through HDD or trenchless installation techniques. This is to show that these works will not result in construction works to the surface.

Further associated development

- 11.1.32 Further associated development is included to ensure that all works under the authorised development can facilitate the construction, operation and maintenance of the Order and includes works that are associated with the main works listed above. Such works must not give rise to any materially new or materially different significant effects from those assessed in the environmental statement or through any other environmental information supplied.

Offshore grid coordinates

- 11.1.33 The offshore grid coordinates to all areas outside the mean high water springs are included here and in the deemed marine licence in Schedule 9.

11.2 Schedule 2 (requirements)

- 11.2.1 The requirements in Schedule 2 are similar to planning conditions and will control the carrying out of the authorised development. Section 120(1) and (2) of the 2008 Act permit the imposition of requirements. Many of the requirements allow for the local planning authority or other authority to approve the details set out and this can include consultation with other relevant bodies. This is consistent with the approach taken by promoters of other linear DCO schemes and enables promoters to bring forward DCOs at an early stage to ensure the timely delivery of schemes.
- 11.2.2 **Requirement 1** (Interpretation) provides for the interpretation of words and phrases used in this Schedule. Most of the definitions relate to particular plans which are to be certified documents under Schedule 13.
- 11.2.3 **Requirement 2** (Time limits) provides that the authorised development must be begun (for the purposes of section 155 of the 2008 Act) within 5 years of the date of the Order coming into force.
- 11.2.4 **Requirement 3** (Parts of the authorised development) provides that applications to the relevant planning authority that are only relevant to a certain part should include a plan or document identifying the part of the authorised development to which the application relates. This provides for context and clarity for the authority when determining applications made under the requirements.
- 11.2.5 **Requirement 4** (Detailed design approval) provides for the submission to and approval of the detailed design of the converter site within Work No. 1. The details of layout and scale of

buildings, finished ground floor levels, appearance and materials, hard surfacing materials, access, parking and circulation areas, refuse and storage, external lighting, lightning protection, landscaping and bunding, fencing and security, above and below ground services and utilities and fire safety are all subject to approval from the relevant planning authority. Any submission on details must be in general accordance with the design principles statement and the converter site parameter plan (both certified documents) and the table of parameters in Schedule 4. For particular elements of the design the relevant planning authority may consult Historic England.

- 11.2.6 **Requirement 5** (Highway works) provides for the details of any highway works to be approved prior to beginning those works. This includes highway works relating to pre-commencement operations. Requirement 5(4) also ensures that the undertaker carries out the necessary road safety audits and carries out the works to remove road safety problems from the highway.

- 11.2.7 **Requirement 6** (Implementation and maintenance of landscaping) provides that onshore works cannot commence until a landscape and ecology management plan have been approved by the relevant planning authority. The onshore works should be carried out in accordance with the approved plan. This requirement also provides for the provision that ensures that replacement trees or shrubs are provided if they are removed, die or become damaged or diseased within 5 years of planting unless they are removed in accordance with an approved plan (for example where temporary trees or shrubs were provided as an interim measure).

- 11.2.8 **Requirement 7** (Management plans) provides for all of the relevant plans that mitigate construction to be submitted and approved where they are relevant to a part of the works. Where there are outline plans already provided and certified under the Order these detailed plans must be in general accordance with those outlines. The works must be carried out in accordance with the plans.

- 11.2.9 **Requirement 8** (Construction traffic management plan) provides that a construction traffic management plan must be provided and approved for a part of the works before those works commence. The highway authority is the relevant authority to approve the construction traffic management plan.

- 11.2.10 **Requirement 9** (Pre-commencement operations) provides the relevant outline plans as certified that the undertaker must comply with when carrying out pre-commencement operations as long as those plans are relevant to the pre-commencement operations in question unless the relevant planning authority or highway authority for the construction traffic management plan agree otherwise.

- 11.2.11 **Requirement 10** (Protected species) provides that surveys must be undertaken pre-construction to establish whether a protected species will be carried out by that part of the authorised development. If protected species are present or a reasonably likely to the undertaker must ensure that the provisions of this requirement are complied with.

- 11.2.12 **Requirement 11** (Archaeology) provides that an onshore written scheme of investigation must be approved by the relevant planning authority prior to commencement of each part of the authorised development. Any pre-commencement surveys for archaeology must comply with the outline onshore written scheme of investigation.

- 11.2.13 **Requirement 12** (Construction hours) provides that construction works can only take place between 07.00 and 19.00 Monday to Friday and between 07.00 and 13.00 on Saturdays unless set out in sub-paragraph 12(2) or as otherwise agreed with the relevant planning authority. The works that can be carried out outside those working hours are trenchless crossing operations which may require 24-hour machinery operations, continuous concrete pours, installation and removal of components within the converter stations, oil filling of transformers at the converter stations, jointing operations within Work No.3, testing and commissioning of any plant installed as part of the authorised development, activity necessary in the instance of an emergency where there is a risk to persons, property or the environment and security monitoring. The requirement allows for start-up and close-down activities to take place on

site before the main working hours. If an emergency has dictated working outside the construction hours then the relevant planning authority should be notified as soon as reasonably practicable.

- 11.2.14 **Requirement 13** (Operational drainage) provides that an operational drainage strategy should be approved prior to the commencement of Work No. 1.
- 11.2.15 **Requirement 14** (Community liaison) provides for the terms of a community liaison plan to be submitted to the relevant planning authority and the highway authority prior to beginning any onshore works. The undertaker must also establish a community liaison group and appoint a community liaison officer before works begin.
- 11.2.16 **Requirement 15** (Skills and employment strategy) provides that an employment, skills and supply chain plan must be discussed with and submitted to the relevant planning authority before onshore works commence and it must be implemented during construction of the onshore works.
- 11.2.17 **Requirement 16** (Decommissioning strategy) provides that a decommissioning strategy must be submitted to the relevant planning authority and the MMO prior to the operational use of the authorised development.
- 11.2.18 **Requirement 17** (Electro-magnetic fields) provides that the onshore works must be carried out, completed and operated in accordance with the electro-magnetic field guidance if relevant.
- 11.3 **Schedule 3 (Procedure regarding certain approvals, etc.)**
 - 11.3.1 Schedule 3 provides for the process to be followed in relation to applications made to discharging authorities for any approvals in relation to the Order unless excluded by Article 52(4).
 - 11.3.2 This is to ensure that such applications are dealt with efficiently and within certain timescales in the context of the national need of the Proposed Development. Provision is, accordingly, made for deemed approval of applications in specified circumstances. The Schedule also makes provision for appeals to be made in the event of a refusal of an application or if the relevant authority requires further information to be provided. The form of that wording mirrors that of a number of recently made DCOs but particularly Schedule 12 of the Riverside Energy Park Order 2020.
 - 11.3.3 Provision is made for the payment of fees incurred by the relevant planning authority in the discharge of Requirements in Schedule 2.
- 11.4 **Schedule 4 (Onshore parameters)**

This schedule provides for the key parameters relevant to the onshore works and notes the relevant Work No., the relevant parameter and the maximum value and unit.
- 11.5 **Schedule 5 (Streets or public rights of way to be temporarily closed)**
 - 11.5.1 This schedule sets out the streets and public rights of way which are subject to temporary closure under Article 16. It references the street or public right of way and the extent of it which may be stopped up.
 - 11.5.2 Part 1 provides for a situation where a diversion is provided whereas Part 2 sets out where no diversion is provided.
- 11.6 **Schedule 6 (Access to works)**

Schedule 6 sets out the locations, referred to in Article 17, where access would be taken from the public highway, for construction and/or operation and maintenance purposes.

11.7 **Schedule 7 (Modification of compensation and compulsory purchase enactments for creation of new rights)**

Pursuant to Article 25, this schedule sets out the modifications to the statutory provisions, including the Land Compensation Act 1973 and the Compensation Purchase Act 1965, applicable to compensation and compulsory purchase under the Order where new rights are to be acquired or restrictions are to be imposed. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016 and more recent changes brought in by section 185 of the Levelling-Up and Regeneration Act 2023.

11.8 **Schedule 8 (Land of which only temporary possession may be taken)**

This sets out the land referred to in Articles 27 and 28 which the undertaker may (respectively) temporarily occupy (albeit noting the wider temporary occupation power in respect of the Order land) and the purpose for which that temporary occupation may be taken which is in connection with a specific Work No.

11.9 **Schedule 9 (Deemed marine licence)**

This schedule includes the wording of the deemed marine licence referred to in Article 45. The undertaker will continue to engage with the MMO and other stakeholders on the provisions for the deemed marine licence (the "licence"). Whilst there are no standard provisions for such a licence the standard structure has been followed based on previously made DCOs and been tailored for the purposes of appropriate mitigation measures relevant to the authorised development.

Part 1 – General

11.9.1 Paragraph 1 (Interpretation) provides the definition and interpretation of certain terms and phrases used in the licence. Many refer back to Article 2 of the Order because the licence is likely to be used independently of the remainder of the DCO but must be consistent with it.

11.9.2 Paragraph 2 (Contacts) sets out the primary points of contact for the various statutory bodies with responsibilities in respect of the UK marine area to which the licence refers.

11.9.3 Paragraph 3 (Licensed marine activities) sets out those parts of the authorised development which constitute licensable marine activities for the purposes of the 2009 Act and are authorised under the licence, including substances or articles which may be deposited on the terms of the licence and the grid coordinates of the area within which the undertaker may carry the licensable marine activities out.

Part 2 – Conditions

11.9.4 Paragraph 4 clarifies that the MMO is entitled to amend documents etc. in respect of which the licence requires compliance by the undertaker but this is limited to where it is not likely to give rise to any materially new or materially different environmental effects to those assessed in the environmental statement. The paragraph further clarifies that all MMO approvals under the licence are subject to the same constraint.

11.9.5 Paragraph 5 (Notification and inspections) sets out information which the undertaker is required to provide to the MMO and other relevant statutory bodies or mariners or publish in relevant bulletins in relation to the licenced activities at various junctures.

11.9.6 Paragraph 6 (Design parameters) sets out parameters which the licensed activities must not exceed without the approval of the MMO, which is subject always to the constraint in paragraph 4.

11.9.7 Paragraph 7 (Stages of construction) requires submission and approval by the MMO of a construction programme setting out the stages of construction of the authorised development seaward of MHWS.

- 11.9.8 Paragraph 8 (Offshore construction environmental management plan) provides for submission and approval by the MMO of an offshore construction environmental management plan for any licensed activities before they are commenced.
- 11.9.9 Paragraph 9 (Aids to navigation) provides for the deployment of various aids to navigation required by the relevant navigational safety and vessel management plan approved as part of the relevant offshore construction environmental management plan or as directed by Trinity House.
- 11.9.10 Paragraph 10 (Other navigation considerations) requires the undertaker to carry out surveys following the completion of the authorised development in relation to compass deviation and changes in water depth and specifies further steps depending on their outcome.
- 11.9.11 Paragraph 11 (Equipment and operation of vessels engaged in licensed activities) stipulates requirements in respect of vessels performing the licensed activities.
- 11.9.12 Paragraph 12 (Chemicals, drilling and debris) governs the carriage and use of chemicals, placement and misplacement of rock material and dropped objects.
- 11.9.13 Paragraph 13 (Force majeure) stipulates standard requirements in force majeure events.
- 11.9.14 Paragraph 14 (Pre-construction plans and documentation considerations) provides for submission and approval by the MMO of a range of plans and programmes for any licensed activities before they are commenced. These include a design plan, construction programme, offshore construction method statement, offshore construction environmental management plan, construction-related monitoring and offshore archaeological written scheme of investigation. Sub-paragraph (4) requires the undertaker to comply with these as approved, with sub-paragraph (3) making particular provision in respect of pre-construction archaeological investigations or material operations comprised in the licensed activities which involve intrusive seabed works.
- 11.9.15 Paragraph 15 (Offshore safety management) makes provision for the submission and approval by the MMO of an emergency response and co-operation plan before commencement of the offshore works in question, which must be implemented as approved.
- 11.9.16 Paragraph 16 (Reporting of engaged agents, contractors and vessels) requires provision to the MMO of details of agents, contractors and vessels engaged in the licensed activities.
- 11.9.17 Paragraph 17 (Post-construction monitoring and surveys) provides for the submission to the MMO of a post-construction monitoring plan and the carrying out of surveys in accordance with it, as approved by the MMO.
- 11.9.18 Paragraph 18 (Maintenance of the authorised development) and Paragraph 19 (Maintenance reporting) authorise the maintenance of the authorised development under the licence and govern the terms on which that maintenance may be carried out.

Part 3 – Procedure for the discharge of conditions

- 11.9.19 Paragraphs 20 (Meaning of “application”) to 22 (Timescales for determination and appeals) inclusive specify a procedure in relation to any applications made to the MMO by the undertaker under the licence by reference to Schedule 4 (Procedure regarding certain approvals, etc.) of the Order, so as to provide consistency between Requirements and deemed marine licence conditions.

11.10 Schedule 10 (Traffic regulation)

This table sets out the streets that are subject to traffic regulation measures further to Article 48.

11.11 Schedule 11 (Protective provisions)

11.11.1 This schedule sets out the provisions for the protection/benefit of statutory undertakers whose equipment may be affected by the authorised development.

11.11.2 The undertaker has engaged with relevant statutory undertakers and will continue to do so following submission of the Application to seek to agree the terms of the protective provisions included within the Order.

11.11.3 Currently the Order contains the following protective provisions:

- (a) Electricity, gas, water and sewerage undertakers;
- (b) Electronic communications code networks;
- (c) Drainage authorities; and
- (d) Bespoke provisions for the protection of the Environment Agency in relation to main rivers.

11.11.4 Further discussion and negotiation will be undertaken with statutory undertakers to develop the protective provisions and further bespoke provisions may be required.

11.12 Schedule 12 (Amendment to local legislation)

11.12.1 Schedule 12 lists the local legislation and byelaws the undertaker seeks to exclude in relation to the proposed development further to Article 55.

11.12.2 Following a review of local legislation the local legislation to be excluded relate to historic railway works and includes the:

- (a) South Western Railway (North Devon) Act 1865;
- (b) South Western Railway (General) Act 1867; and
- (c) Bideford, Westward Ho! and Appledore Railway Act 1896.

11.13 Schedule 13 (Certified Documents)

This schedule lists the documents which are to be submitted pursuant to Article 56 for certification by the Secretary of State.