

Connah's Quay Low Carbon Power

DCO Guidance Compliance Checklist

Planning Inspectorate Reference: EN010166

Document Reference: EN010166/APP/3.5

Planning Act 2008 (as amended)

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 - Regulation 5(2)(q)

Revision 00

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1. Introduction

1.1.1 Uniper UK Limited (the Applicant) has made an application (the Application) for a development consent order (DCO) from the Secretary of State (SoS) to authorise the Connah's Quay Low Carbon Power project (the Project) which is described at Schedule 1 (Authorised Development) to the **Draft DCO** (**EN010166/APP/3.1**), which accompanies the Application and is entitled The Connah's Quay Low Carbon Power Order 202[*] (the Order) (**EN010166/APP/3.1**).

1.1.2 The Applicant is seeking a DCO for the construction, operation (including maintenance) and decommissioning of a proposed low carbon Combined Cycle Gas Turbine (CCGT) Generating Station fitted with Carbon Capture Plant (CCP) (the Connah's Quay Low Carbon Power (CQLCP) Abated Generating Station) and supporting infrastructure (collectively 'the Proposed Development').

1.1.3 The CQLCP Abated Generating Station would comprise up to two CCGT with CCP units (and supporting infrastructure) achieving a net electrical output capacity of more than 350 megawatts (MW; referred to as MWe for electrical output) and up to a likely maximum of 1,380 MWe (with CCP operational) onto the national electricity transmission network.

1.1.4 Through a carbon dioxide (CO₂) pipeline, comprising existing and new elements, the Proposed Development would make use of CO₂ transport and storage networks owned and operated by Liverpool Bay CCS Limited, currently under development as part of the HyNet Carbon Dioxide Pipeline project (referred to as the 'HyNet CO₂ Pipeline Project'), that will transport CO₂ captured from existing and new industries in North Wales and North-West England, for offshore storage. The captured CO₂ will be permanently stored in depleted offshore gas reservoirs in Liverpool Bay.

1.1.5 For the purposes of the electrical connection, National Grid Electricity Transmission plc (NGET), which builds and maintains the electricity transmission networks, is responsible for the operation and maintenance of the existing 400 kV NGET Substation.

1.1.6 A description of the Proposed Development, including details of maximum parameters, is set out in **Chapter 4: The Proposed Development** of the **Environmental Statement** (ES) (**EN010166/APP/6.2.4**). At this stage in the development, the design of the Proposed Development incorporates a necessary degree of flexibility to allow for ongoing design development.

1.1.7 This document demonstrates compliance with the relevant guidance on DCO drafting. There are two key pieces of guidance relevant to drafting DCOs:

- i. Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects (Government DCO Guidance) (Ref 1); and
- ii. Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders (PINS Advice Note 15) (Ref 2).

- 1.1.8 The **Draft DCO (EN010166/APP/3.1)** will, if approved and made, be a statutory instrument (SI) that is required to follow statutory drafting conventions. The Government DCO Guidance and PINS Advice Note 15 hold no statutory status but provide advice from the Government and Planning Inspectorate (PINS) on the preparation of a DCO, and applicants are strongly advised to follow this guidance and advice and provide justifications for any departures from them. The Applicant has, therefore, sought to explain and evidence that the **Draft DCO (EN010166/APP/3.1)** and **Explanatory Memorandum (EM) (EN010166/APP/3.2)** are in compliance with both the Government DCO Guidance and PINS Advice Note 15.
- 1.1.9 Table 1 below outlines how the **Draft DCO (EN010166/APP/3.1)** and **EM (EN010166/APP/3.2)** submitted with the Application complies with the Government DCO Guidance.
- 1.1.10 Table 2 below outlines how the **Draft DCO (EN010166/APP/3.1)** and **EM (EN010166/APP/3.2)** submitted with the Application complies with PINS Advice Note 15.

2. Development Consent Order Guidance Checklist

Table 1: Compliance with the Government DCO Guidance

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
Content of a DCO			
1	001	<i>This National Infrastructure Planning Guidance (“guidance”) is primarily for applicants involved in preparing an application for development consent and provides detail on the content of a Development Consent Order (DCO) and Explanatory Memorandum (EM). It also provides a context for all users of the Nationally Significant Infrastructure Project (NSIP) regime about how the DCO and EM fit into the overall process.</i>	The Applicant has used and applied the guidance when preparing the Draft DCO (EN010166/APP/3.1) and EM (EN010166/APP/3.2).
2	002	<i>Under Regulation 5 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (the “APFP Regulations 2009”), an applicant for an Order granting development consent for a proposed NSIP must include in the application, amongst other documents, a draft of the DCO together with an EM which explains the purpose and effect of the provisions in the draft Order.</i>	The Application submission includes both the Draft DCO (EN010166/APP/3.1) and EM (EN010166/APP/3.2) in compliance with Regulation 5 of the APFP Regulations 2009.
3		<i>If approved and made by the [SoS], the DCO is the most significant outcome of the NSIP process because it:</i>	The Applicant is aware of the importance of the DCO as an outcome of the NSIP process.

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
		<ul style="list-style-type: none"> • grants the development consent and some other required permissions for the approved project; • grants the power to compulsorily acquire land and rights, if so required; • defines the works which have been approved; and • sets out the requirements (conditions attached to the DCO) which will control the construction, commissioning, operation and, if appropriate, the decommissioning of the approved works. 	
4		<p>Where a DCO seeks to apply, modify or exclude a statutory provision, make bylaws, or deal with a matter relating to or ancillary to development as specified in Part 1 of Schedule 5 of the Planning Act 2008 (as amended) [the 2008 Act], section 117 of the [2008 Act] requires the DCO to be in the form of a [SI]. In practice, every DCO to date has been made as a SI and therefore this guidance assumes that this will continue to be the case. A draft DCO should therefore be submitted and validated as a draft SI using the publicly available template, and follow the statutory drafting conventions.</p>	<p>The Draft DCO (EN010166/APP/3.1) is in the form of an SI and a SI Validation Statement (EN010166/APP/3.3) has been submitted with the Application.</p>
5		<p>Whilst many applicants continue to refer to the lapsed Infrastructure Planning (Model Provisions) Order 2009 in their EM, the requirement under section 38 of the [2008 Act] to have regard to model provisions containing standard articles for a</p>	<p>As explained in the EM (EN010166/APP/3.2), the Draft DCO (EN010166/APP/3.1) is based on up to date precedented drafting from recent DCOs. The drafting draws mostly on precedents from previous DCOs which relate</p>

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		<p><i>DCO was removed by the Localism Act 2011. There is therefore no need to include provisions in a draft DCO contained in the Model Provisions Order which are no longer relevant. The current approach to drafting a DCO is set out in this guidance supplemented by precedents from made DCOs in recent years, and the Planning Inspectorate's advice covering both the DCO and the accompanying EM.</i></p>	<p>to similar development as that of the Proposed Development. The drafting does sometimes draw upon the Model Provisions and the EM (EN010166/APP/3.2) explains this accordingly. However, regardless of whether the drafting is based upon a Model Provision or not, there is always a precedent basis in a recent DCO for the drafting selected, unless bespoke drafting is required to meet needs specific to the Proposed Development.</p>
6	003	<p><i>The length or scope of a DCO is contingent entirely upon the scale and complexity of the proposed development, the powers granted, modified or excluded, and the number and type of consents and authorisations granted. This means that some DCOs can be very substantial documents, and hence the advice to applicants is to begin preparation of their draft DCO at an early stage during pre-application.</i></p>	<p>The Applicant began preparing its Draft DCO (EN010166/APP/3.1) and EM (EN010166/APP/3.2) early in the pre-application process. A draft of each document was submitted in January 2025 for PINS review and the feedback was taken on board in finalisation of the documents for submission of the Application. Appendix F-3 of the Consultation Report (EN010166/APP/5.1) explains how regard was had to PINS advice on the January 2025 drafts.</p>
7		<p><i>Whilst each DCO must be drafted to meet the specific circumstances of the proposed development, the standard approach is to set out the main provisions as articles grouped into appropriate parts (sections). The following list includes some of the most common provisions included in the articles of a DCO:</i></p> <ul style="list-style-type: none"> <li data-bbox="691 1346 1379 1376"><i>• the date upon which the SI comes into force;</i> 	<p>The Draft DCO (EN010166/APP/3.1) contains all elements listed, save that no Deemed Marine Licence is incorporated to the drafting because it is not possible to deem marine licences in Wales.</p>

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
		<ul style="list-style-type: none">• <i>definitions of key terms in the DCO and provisions setting out how to interpret the DCO;</i>• <i>the principal powers of the DCO including:</i><ul style="list-style-type: none">• <i>development consent granted by the DCO;</i>• <i>the parameters of the authorised development and permitted limits of deviation;</i>• <i>the authorised use;</i>• <i>the maintenance and operation of the authorised development;</i>• <i>to whom the powers in the DCO are granted and whether these can be transferred to another body; and</i>• <i>the application and disapplication and modification of legislative provisions;</i>• <i>necessary powers in relation to:</i><ul style="list-style-type: none">• <i>highways works, forming or laying out access arrangements, creating, diverting, restricting or stopping up or otherwise prohibiting traffic on public rights of way, traffic regulation measures and street works;</i>• <i>supplementary powers such as the discharge of water, authority to survey and investigate land, and works to protect buildings;</i>	

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		<ul style="list-style-type: none"> where appropriate, powers of acquisition including compulsory acquisition of land and rights, powers to extinguish public rights of way and override easements and other rights, acquisition or use of subsoil or airspace only, temporary use and possession of land to carry out and maintain the authorised development and recovery of costs of new connections; the procedure for obtaining approvals and discharging requirements attached to the DCO and where necessary, an appeals mechanism against refusal; protection of statutory undertakers' interests including apparatus and the recovery of costs; where appropriate, a Deemed Marine Licence; any necessary operational powers to deal with matters such as felling or lopping of trees and removal of hedgerows; and general matters such as the certification of plans and documents, provision for electronic communications, and application of landlord and tenant law. 	
8		<p><i>The powers and provisions in the articles will be amplified and detailed as necessary in the Schedules to the DCO. Each Schedule relating to a specific article in the DCO will set out in detail how,</i></p>	<p>The Draft DCO (EN010166/APP/3.1) has been prepared so that the Schedules function in the manner specified. As is explained in the EM (EN010166/APP/3.2), each Schedule</p>

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		<p><i>when and where a power can be used with exact reference to areas identified or defined on specified plans. For example, if the DCO contains powers to compulsorily acquire land, the Schedule which corresponds to the articles granting those powers will identify the specific plot of land, which component of the authorised development this relates to and the purposes for which rights may be acquired.</i></p>	<p>provides any necessary detail as relates to the power given through its associated article (or articles). For example, Schedule 5 (streets, public rights of way and rights of navigation to be restricted and stopped up) specifies the specific streets, public rights of way and rights of navigation which may be restricted and stopped-up through the powers outlined in Article 15 (stopping up of streets, public rights of way and rights of navigation). In addition, Schedule 13 (protective provisions) provides the detailed protective provisions to benefit statutory undertakers, as is given effect by Article 44 (protective provisions).</p>
9		<p><i>It is standard practice for Schedule 1 to the DCO to set out the precise description of the authorised development and any associated development as numbered works, while Schedule 2 commonly sets out all the requirements attached to the DCO. Other Schedules will typically cover closure and alterations to streets, rights of way, and protective provisions to cover the interests of affected statutory undertakers.</i></p>	<p>The Draft DCO (EN010166/APP/3.1) is structured so that Schedule 1 (authorised development) details the authorised development for which consent would be granted and then Schedule 2 (requirements) lists all requirements which apply.</p>
10	004	<p><i>Section 235 of the [2008 Act] contains a range of definitions of terms used in the Act, and definitions in a draft DCO should refer to these to avoid any unnecessary repetition, or where there is conflict provide an explanation and justification in the EM. It</i></p>	<p>The Draft DCO (EN010166/APP/3.1) cross refers to Section 235 of the 2008 Act to avoid repetition where practical. For example, the definitions for 'address' and 'building' directly cross-refer to section 235(1) of the 2008 Act.</p>

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		<p><i>is, however, essential that the draft DCO is precise in its meanings and therefore definitions will often need to be bespoke to the development which is the subject of the Order. In all circumstances, definitions should be kept simple and not amount to effectively DCO provisions themselves.</i></p>	
11	005	<p><i>"Commencement" is a key definition in a DCO as the authorised development cannot legally commence until all pre-commencement requirements have been discharged. For this reason, having received development consent, developers may seek to carry out site surveys and some preliminary works without formally "commencing" the authorised development, while working through the process of discharging pre-commencement requirements. To do this, DCOs normally contain a definition of commencement which allows for specified preliminary works that will not be considered a material operation which begins the development in accordance with section 155 of the [2008 Act].</i></p>	<p>The Draft DCO (EN010166/APP/3.1) includes a definition for "commence", which carves out "site enabling works" such that these works will not be considered a material operation which begins the development in accordance with section 155 of the 2008 Act. "Site enabling works" in turn has its own specific definition so it is clear precisely what is not included within the definition of "commence".</p>
12		<p><i>The definition of commencement must not provide for preliminary works which are so extensive that they would be likely to have significant environmental effects themselves, and would normally need consideration and approval by the discharging authority prior to such works starting. Typical examples of matters which are not</i></p>	<p>The definition of "site enabling works" aligns with works that the ES has concluded would not be likely to have significant environmental effects themselves. This is confirmed in ES Chapter 5: Construction Management and Programme (EN010166/APP/6.2.5).</p>

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		<i>acceptable preliminary works include major earthworks, clearance of trees and ground clearing, activities affecting protected species or archaeological remains, unless appropriate controls are secured in another manner.</i>	
13		<i>The proposed definition of commencement and any permitted pre-commencement works or permitted preliminary works will be carefully considered by the Examining Authority throughout the course of an examination of the application with reference to the specific circumstances of the proposed works.</i>	The Applicant has provided a more detailed explanation regarding its "commence" and associated "site enabling works" definition in the EM (EN010166/APP/3.2) .
14	006	<i>Most DCOs will require a provision to maintain the authorised development. The definition of maintenance must not be so extensive as to permit the replacement of the consented development with the construction of what is effectively a different project. Neither should maintenance activities result in adverse significant environmental effects not already identified or assessed as part of the Environmental Statement (ES) submitted in relation to the proposed development. It is therefore appropriate to include such a restriction in the way maintenance is defined in the DCO.</i>	The definition of "maintain" included within the Draft DCO (EN010166/APP/3.1) is preceded by the HyNet Carbon Dioxide Pipeline Order 2024. As further detailed in the EM (EN010166/APP/3.2) , The list of maintenance activities is considered appropriate since it affords the flexibility required to enable the undertaker to respond to the range of maintenance activities that may need to be undertaken during the lifetime of the authorised development.
15	007	<i>It is essential that the drafting in the DCO accurately defines both the land over which powers are required and the works to be undertaken. In turn these must be consistent with the land and works plans submitted with the application</i>	Separate definitions for "Order land" and "Order limits" are included within the Draft DCO (EN010166/APP/3.1) . "Order land" is defined as the land shown on the land plans which is within the limits of land to be acquired

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		<i>under Regulation 5(2)(i) and (j) and (o) of the APFP Regulations 2009.</i>	or used and described in the book of reference under article 46 (certification of plans etc.) and "Order limits" is defined as the limits shown on the works plans within which the authorised development may be carried out.
16		<i>The [2008 Act] provides for developments and works which are associated and/or ancillary ("associated development") to the principal development (or NSIP) to be included with the authorised development. The guidance covering associated development and the provision of housing in NSIPs provide examples appropriate to different types of NSIP, recognising that each case will have its own range of such matters and that technological innovations may give rise to new types of associated development not yet identified.</i>	All of the authorised development listed in Schedule 1 of the Draft DCO (EN010166/APP/3.1) falls within the definition of a "generating station" for the purpose of sections 14 and 15 of the 2008 Act, or may be lawfully authorised as part of the DCO on the basis that it meets the definition of "associated development" under the 2008 Act and related Guidance.
17		<i>But in all cases, the key considerations are that associated development and works proposed to be included in a DCO must be demonstrably linked and subordinate to the NSIP, and required to ensure it can be built or operated. It is not acceptable to propose associated development in a DCO which is self-contained or effectively a separate NSIP development in its own right. Further guidance is provided separately on associated development applications for major infrastructure projects.</i>	Following the approach taken in the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 and the Sizewell C (Nuclear Generating Station) Order 2022, the Applicant has not sought to specify which elements are considered to be part of the "generating station" and which to be "associated development". It is considered that because it is clear that all elements of the proposals put forward are necessary for the construction and operation of a power station it is not material whether they are considered to

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			<p>be part of the generating station or associated development.</p> <p>Schedule 1 also includes a provision which sets out a number of minor works that are common to a number of work packages, at paragraph 14 of Schedule 1 under the heading "Site Wide Works". These include works such as landscaping and drainage, establishment of construction compounds, vegetation clearance and utilities installation. These works are demonstrably linked and subordinate to the NSIP.</p>
18	008	<p><i>In a situation where the design of the proposed development is contingent on continuing detailed studies and refinement, the environmental assessment will be carried out on a worst case or 'Rochdale Envelope' basis. The approach to describing the development in the DCO must then be through parameters setting out the maximum permitted dimensions of the physical elements. However, these must be no more than necessary to accurately contain the proposed development.</i></p>	<p>The maximum parameters of the Proposed Development are constrained by virtue of Article 6 (limits of deviation) and Requirement 3 (detailed design) of the Draft DCO (EN010166/APP/3.1).</p> <p>Article 6 allows for lateral deviation to the extents specified for each work as shown on the Works Plans. There are no separate lateral deviations beyond the works areas. Vertical deviation is divided into underground Liverpool Bay CCS Works and all other works.</p>
19		<p><i>Some DCOs require the final positioning of works to be subject to detailed design or site investigation to achieve an optimum scheme. This may be the case with highway proposals or the micro siting of electricity pylons for example. The DCO will usually</i></p>	<p>Requirement 3 specifies that the detailed design, as approved by the relevant planning</p>

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
		<p><i>provide for the precise location of numbered works to be subject to horizontal and/or vertical limits of deviation. In all cases these limits should be specific to the individual works and kept to the minimum.</i></p>	<p>authority post-consent, must be in general accordance with the Parameter Plans (EN010166/APP/2.5) and the Design Principles Document (EN010166/APP/7.8). These documents set specific limits on the heights and dimensions of constituent elements of the Proposed Development.</p> <p>The limits of deviation and parameters specified in Article 6 and Requirement 3 tie directly to the assumptions made within the ES (EN010166/APP/6.1-6.4).</p>
20	009	<p><i>A DCO may apply, modify or exclude an existing statutory provision, and the proposed power must be amplified and detailed in a corresponding Schedule. This must identify the provision to be changed, the Act or SI number of the provision as applicable, clearly detail the changes and when the changes will come into effect.</i></p>	<p>Article 9 of the Draft DCO (EN010166/APP/3.1) sets out legislative provisions which are amended or disapplied for the purposes of the Proposed Development. This Article cross refers to Schedule 3 (legislation to be disapplied), which sets out relevant local legislation which is disapplied for the purposes of the Proposed Development. All provisions modified by virtue of this article have effect from the date the Order is made.</p>
21	010	<p><i>A DCO can also include powers which remove the need to obtain certain additional authorisations, listed in Schedule 2 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (as amended) (the</i></p>	<p>Disapplication and modification is sought for the following prescribed consents:</p> <ul style="list-style-type: none"> • Provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25

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		<p><i>IPMPP Regulations 2015) and the government is keen that maximum use is made of these provisions, as explained in pre-application guidance. However, it is necessary for the authority responsible for granting the authorisation to consent to this process and consequently applicants should consider the desirability for such authorisations to be included in a DCO and discuss these with the appropriate authorities during the pre-application stage.</i></p>	<p>(byelaw making powers of the authority) to the Water Resources Act 1991.</p> <ul style="list-style-type: none"> • Sections 23 (prohibition on obstructions etc. in watercourses) and 30 (authorisation of drainage works in connection with a ditch) of the Land Drainage Act 1991. • Regulation 6 (permitted work) of the Hedgerows Regulations 1997 is modified so as to read as if there were inserted a new limb to cover the Order. • Section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981 is modified so as to read as if there were inserted a new limb to cover the Order. <p>The status of engagement and agreement with the relevant approving bodies can be found in each respective Statement of Common Ground.</p>
22	011	<p><i>The [2008 Act] provides for the inclusion of powers in a DCO to cover compulsory acquisition and temporary possession of land and rights, and many DCOs authorise interference in land to facilitate construction. An applicant may also include an article to extinguish and suspend private rights over land it is acquiring, or it already owns.</i></p>	<p>These powers are included at Part 5 (powers of acquisition) of the Draft DCO (EN010166/APP/3.1).</p>

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23		<p><i>There are particular provisions in Chapter 1 of Part 7 of the [2008 Act] relating to statutory undertakers, Crown land, commons and open spaces and land held inalienably by the National Trust.</i></p>	<p>The Draft DCO (EN010166/APP/3.1) has been drafted to comply with the provisions in Chapter 1 of Part 7 of the 2008 Act.</p>
24		<p><i>Applicants are reminded that Regulation 6 of the IPMPP Regulations 2015 limits the period in which compulsory acquisition powers can be exercised to five years, though a longer or shorter period can be specified in the DCO itself under section 154 of the [2008 Act]. However, given the uncertainties that a lengthy delay to implementing approved compulsory acquisition powers can have for some landowners, seeking a period of longer than five years will require justification to persuade the [Sos] that this is warranted.</i></p>	<p>The usual 5-year period is sought by the Applicant for the exercise of compulsory acquisition powers, with a now precedented exception for circumstances where judicial review proceedings are brought to challenge the grant of development consent, wherein a maximum of 1 year extension will be applied to the 5 year time limit for exercising such powers.</p>
25		<p><i>It may be appropriate to include a power to impose restrictive covenants over part of the land which is subject to compulsory acquisition or use under the DCO, and such cases will need to be explained and justified in the EM. Where land is only proposed to be subject to powers for the compulsory acquisition of land and/or the imposition of restrictive covenants, DCO provisions must identify the land to which they relate and the nature of the restrictive covenant to be imposed.</i></p>	<p>Article 27 (compulsory acquisition of rights and restrictive covenants) of the Draft DCO (EN010166/APP/3.1) provides for the ability to impose restrictive covenants over land identified for compulsory acquisition. An explanation of the approach and justification for this is provided within the EM (EN010166/APP/3.2).</p>

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
26	012	<p><i>Protective provisions can be included as Schedules to the DCO where a NSIP may affect other assets. They are usually agreed with key statutory undertakers, such as utility companies, but may also need to be agreed with other bodies.</i></p>	<p>Protective provisions have been included at Schedule 13 (protective provisions) of the Draft DCO (EN010166/APP/3.1).</p>
27		<p><i>Applicants should expect to agree the form of protective provisions with the relevant parties for inclusion in the draft DCO prior to submitting the application for development consent. Where agreement on protective provisions has not been reached during the pre-application stage, applicants should include their preferred drafting taking into account the standard protective provisions commonly used by the relevant party (usually statutory undertakers) and endorsed in recent DCO decisions. It is not acceptable to submit a draft DCO with blank schedules for protective provisions on the basis these will be supplied during the examination, and to do so means the application is highly unlikely to be accepted for examination by the Planning inspectorate under section 55 of the [2008 Act].</i></p>	<p>The Applicant made efforts to engage with statutory undertakers during the pre-application stage and has agreed the form of wording for certain protective provisions included at Schedule 13. Engagement remains ongoing with the remaining statutory undertakers in order to come to an agreed form but where agreement has not quite been reached, the Applicant's preferred form of wording has been included at Schedule 13. The EM (EN010166/APP/3.2), Statement of Reasons (EN010166/APP/4.3) and Land and Rights Negotiations Tracker (EN010166/APP/4.2) provides further detail on the status of agreement with statutory undertakers on protective provision drafting.</p>
28		<p><i>Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary so they accurately reflect the proposed development. They should also not simply negate</i></p>	<p>The Applicant has sought to adapt statutory undertaker preferred wording to ensure this aligns with what will be required to carry out the Proposed Development.</p>

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
		<i>other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land.</i>	
29		<i>Examining Authorities are expected to ensure that the final form of a recommended DCO contains protective provisions which are bespoke to the application under consideration.</i>	The protective provisions included at Schedule 13 of the Draft DCO (EN010166/APP/3.1) are bespoke to the Application.
30	013	<i>Subject to geographic restrictions, a DCO may deem a Marine Licence (DML) to have been granted under Part 4 of the Marine and Coastal Access Act 2009 for the activities specified in the DCO subject to any conditions. This will be provided for in an article with the DML itself contained in a specific Schedule.</i>	This element of the guidance does not apply to the Project because NSIPs in Wales cannot deem a marine licence.
31		<i>The Marine Management Organisation (MMO) must be involved in the form and content of the proposed DML and the conditions to which it should be subject as it will be the body discharging them. Where applicants choose to have a marine licence deemed by a DCO, they should seek to agree the draft DML with the MMO prior to submitting the application to the [Planning Inspectorate (further advice is provided by the Planning Inspectorate on working with the MMO).</i>	
32		<i>The DML must be drafted so that it is effectively an independent legal document, for example relevant definitions and project works must be within the</i>	

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		<i>DML. Furthermore, requirements in the DCO must not conflict with conditions attached to the DML. The DML will be approved as part of a DCO, but there are limitations on what changes can be made to an approved DML as a consequence of seeking a material or non-material change to an approved DCO under Schedule 6 of the [2008 Act].</i>	
33	014	<i>A DCO typically provides for the applicant to appeal against a decision of a discharging authority (where that discharging authority is a planning or highway authority) concerning requirements where it disagrees with a decision. There are two possible approaches, and it is for the applicant to determine which route is best for the project in question.</i>	The Draft DCO (EN010166/APP/3.1) includes provisions which allow for appeals against a decision of a discharging authority. Bespoke drafting has been used to detail the appeals mechanism. The drafting used mirrors that of the HyNet Carbon Dioxide Pipeline Order 2024, which is a recent project in the same authority area as the Proposed Development and so should be appropriate to resolve any dispute between the Applicant and the relevant planning authority who will be the discharging authority.
34		<i>The first is to import the standard appeals process from the Town and Country Planning Act 1990, with modified versions as appropriate of sections 78 and 79 of the Act. There are many examples from made DCOs to guide applicants.</i>	
35		<i>The second is to set out in detail in the draft DCO a bespoke appeals mechanism, and in this case the Planning Inspectorate has produced standard drafting, which will need to be tailored to the specific circumstances of the proposed development.</i>	
36		<i>In some cases, arrangements between the [SoS] and promoters mean that the [SoS] is the</i>	The discharging authority for all approvals under the Draft DCO (EN010166/APP/3.1) is

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
		<p><i>discharging authority. In those cases, the decisions of the [SoS] are unlikely to be the subject of an appeals process, and this should be confirmed in the EM.</i></p>	<p>the relevant planning authority (which will be Flintshire County Council (FCC)). This is confirmed at paragraph 9.2.3 of the EM (EN010166/APP/3.2) when describing each requirement.</p>
37	015	<p><i>Applicants may wish to include an article within the draft DCO to allow the removal of hedgerows (if necessary) for the purposes of carrying out the authorised development without the need to first secure consent under the Hedgerows Regulations 1997. Such an article can either refer to the specific hedgerows intended for removal described clearly in a Schedule, or drafted to include powers for general removal of hedgerows subject to appropriate controls and mitigation being included.</i></p>	<p>Regulation 6 (permitted work) of the Hedgerows Regulations 1997 is modified so carrying out or maintenance of development which has been authorised by The Connah's Quay Low Carbon Power Order 202* is a permitted work that does not require prior consent.</p> <p>The power to remove such hedgerows is provided for in Article 42 (felling or lopping of trees and removal of hedgerows) of the Draft DCO (EN010166/APP/3.1), which is constrained by the specified hedgerows within Schedule 12.</p>
38		<p><i>Similarly, applicants may also wish to include powers allowing them to fell, lop or cut back roots of trees subject to a Tree Preservation Order (TPO). This power can extend to trees which are otherwise protected by virtue of being situated in a conservation area. The key requirement is to clearly set out the conditions which must be met before the power can be used, specifically to identify the</i></p>	<p>There are no trees subject to TPOs within the Order limits but there are trees subject to TPOs immediately adjacent to the Accommodation Works Areas.</p>

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
		<i>affected trees and the works permitted to each tree in a Schedule.</i>	
39	016	<i>It is normal to provide an article and Schedule in the draft DCO listing a range of plans and other documents which are required to be certified as true copies by the [SoS] following approval of the DCO. If this includes the ES as a whole, certification is a lengthy and time-consuming task and sometimes is not completed until well after the approved development is well into implementation.</i>	Schedule 14 of the Draft DCO (EN010166/APP/3.1) specifies the documents to be certified as true copies by the SoS. The ES (EN010166/APP/6.1-6.4) is included as a document to be certified.
40		<i>Whilst there must be no ambiguity over what has been approved and the plans and documents which describe this, applicants should limit those plans and documents needing certification to those which are secured under the DCO and particularly which may be different to the version submitted as part of the application.</i>	The documents to be certified are only those which are referenced within the body of the Draft DCO (EN010166/APP/3.1) .
41	017	<i>Section 120 of the [2008 Act] provides that a DCO may impose requirements in connection with the development for which consent is granted. Such requirements may correspond with conditions which could have been imposed on the grant of planning permission under the Town and Country Planning Act 1990. In this regard, the relevant paragraphs of the National Planning Policy Framework and associated Planning Practice Guidance concerning conditions will generally apply. Requirements should therefore be precise, enforceable,</i>	Requirements are included within the Draft DCO (EN010166/APP/3.1) at Schedule 2. The Applicant considers that all requirements are precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects.

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
		<i>necessary, relevant to the development, relevant to planning and reasonable in all other respects.</i>	
42		<p><i>The body to whom the applicant will need to apply for the discharge of each requirement must be named in the DCO. For some requirements this will typically be the relevant planning authority for the area(s) within which the development is situated, sometimes taking into account the views of a named statutory body. In other cases, it may be a statutory body directly or the [SoS]. Where arrangements exist between promoters and the [SoS], these will not ordinarily be recommended for amendment by the Examining Authority. Unless such arrangements exist, applicants are encouraged to agree wording with the discharging body as early as possible and ideally prior to submission of the application to the Planning Inspectorate.</i></p>	<p>The discharging authority for all requirements is specifically identified as the relevant planning authority, which will be FCC for the Proposed Development.</p> <p>The Applicant has engaged with FCC on this approach and shared copies of the draft DCO on an ongoing basis with FCC ahead of submission of the application.</p>
43		<p><i>Requirements can impose an obligation on the applicant to begin development within a certain date of the DCO coming into effect. They can also be drafted to ensure the authorised development is carried out in general accordance with design drawings and constructed in accordance with a written phasing scheme. There are instances where proposed requirements in a DCO will interact with the conditions of an existing planning permission for development in or adjacent to the</i></p>	<p>The Proposed Development Order limits overlap with consent granted by the SoS pursuant to section 36 (consent required for construction of etc. generating stations) of the Electricity Act 1989 in respect of the existing power station dated 25 March 1993. Article 9 (disapplication, application and modification of legislative provisions and modifications to section 36 consent) has been drafted to ensure that any conflicts are resolved through</p>

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
		<p><i>site. Applicants are therefore encouraged to consider these thoroughly to ensure that any conflicts are identified and a means of resolving them put forward.</i></p>	<p>the drafting of the Draft DCO (EN010166/APP/3.1).</p>
44		<p><i>An application may have significant adverse environmental effects that require mitigation; such effects will be identified in the accompanying ES and/ or relevant environmental information. Any mitigation measures relied upon in the ES must be capable of being delivered, often through relevant management plans such as a Code of Construction Practice, or a Construction Environmental Management Plan and/or a Site Waste Management Plan. These mitigation measures must be appropriately secured, and this will generally be achieved through the requirements in the DCO.</i></p>	<p>Mitigation plans are secured by requirements in the Draft DCO (EN010166/APP/3.1). For example, the Construction Environmental Management Plan (CEMP) needs to be submitted for approval by the relevant planning authority prior to the commencement of any relevant stage and such plan must be in general accordance with the Framework CEMP (EN010166/APP/6.5).</p>
45		<p><i>Requirements can impose an obligation on the applicant to seek approval of final details of the proposed development prior to construction. These should typically be drafted such that they are not tailpiece requirements which simply provide for their own variation, but at the same time should not prevent the discharging authority from approving details which would lead to environmentally better outcomes where appropriate.</i></p>	<p>Tailpiece wording is applied for approvals under requirements via paragraph 1(2) of Schedule 2 (requirements) of the Draft DCO (EN010166/APP/3.1). Many of the requirements require submission of details for approval by the local planning authority. Those requirements are drafted with a view to enabling the undertaker to obtain approval for part of the authorised development and not require it to discharge the requirement for the whole of the authorised development. This</p>

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
			permits an appropriately flexible approach to the discharge of requirements by the undertaker and provides an appropriate balance between development not starting until details are approved and allowing other parts of the authorised development (where details are already approved) to be constructed. As further explained in the EM (EN010166/APP/3.2) , this approach is appropriate and precedented. The approach to tailpieces is such that variations are only permitted where there would be no materially new or materially different environmental effects to the original position. Article 2(9) (interpretation) clarifies that such variation does not prevent approval of updates that would have a materially beneficial impact to the environment.
46	018	<p><i>Changes to the wording of a draft DCO may well be put forward by the applicant and others during the course of the examination. This may be for several reasons such as responding to:</i></p> <ul style="list-style-type: none"> • <i>questions raised by the Examining Authority;</i> • <i>representations made by interested parties;</i> <i>or</i> • <i>agreements reached with other interested parties, for example in relation to protective provisions or revisions to requirements.</i> 	This element of the guidance is not applicable at the pre-application stage.

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
47		<p><i>As explained in the fast-track guidance, it is most unlikely that any but minor changes are possible to an application accepted for a fast-track examination otherwise the completion of the examination within four months would be at substantial risk.</i></p>	<p>The Project is not a fast-track application and so this element of the guidance does not apply.</p>
48		<p><i>Given the central importance to the NSIP consenting process of the DCO itself, it is in everyone's interests that it is given thorough scrutiny by the Examining Authority during the examination and amended as appropriate so that the final form is in an optimum state to recommend to the [SoS].</i></p>	<p>This element of the guidance is not applicable at the pre-application stage.</p>
49		<p><i>The examination timetable will make provision for revised version(s) of the draft DCO to be submitted by the applicant. As the form of the draft DCO at the end of the examination can often differ substantially from that submitted as part of the application it is important that there is a clear audit trail through tracked change versions to identify both changes to the draft DCO made during the examination and the reasons why those changes have been made. This will greatly assist the [SoS] in understanding how the final form of any DCO that is recommended by the Examining Authority has evolved. A validated word version of the final DCO (in a [SI] template) is also required by the [SoS] and should be submitted before the end of the examination.</i></p>	

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
50		<i>Once approved by the [SoS], a DCO can only be altered in line with the process set out in section 153 and Schedule 6 to the [2008 Act].</i>	
51	019	<i>Regulation 5(2)(c) of the APFP Regulations 2009 requires that the draft DCO must be accompanied by an EM explaining the purpose and effect of each provision in a draft DCO. The EM is used by the Examining Authority and the [SoS] as decision-maker to help understand what is proposed in the draft DCO, why particular provisions have been included and from where the wording has been derived. Such information therefore needs to be more than just a description of the proposed powers.</i>	An EM (EN010166/APP/3.2) has been submitted with the Application.
52		<i>A justification must be provided in the EM for every article and requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/or controversy in relation to the inclusion of that particular power. There is no requirement to explain where and how the DCO drafting departs from the model provisions set out in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, which has now lapsed.</i>	The EM (EN010166/APP/3.2) includes an explanation of and justification for every article and requirement within the Draft DCO (EN010166/APP/3.1) . Each explanation includes clarification of the precedent used for such provision or whether novel drafting is used. Whilst not a requirement to reference how the drafting departs from the model provisions, such explanation is occasionally included to provide context for the origin of the drafting precedent.
53		<i>There is no difficulty with explaining that the formulation of a particular article or requirement has been used in other made DCOs, but a justification</i>	As well as identifying the precedent of the relevant provision, the EM (EN010166/APP/3.2) justifies why this is

Ref. No.	Guidance paragraph/reference	Extract of Guidance	Applicant Compliance
		<p><i>must be provided as to why this is appropriate in the specific circumstances of the draft DCO. A statement that this is simply a precedent provision will not suffice. Where the principle of the provision is well established, the detailed drafting should follow the relevant Government Department's preferred drafting unless there are particular circumstances arising from the nature of the specific NSIP.</i></p>	<p>necessary in the context of the Proposed Development. For example, Article 9 (disapplication, application and modification of legislative provisions and modifications to section 36 consent) of the Draft DCO (EN010166/APP/3.1) specifically modifies extant legislation to avoid conflicts with the Proposed Development and existing regimes.</p>
54		<p><i>For unprecedented provisions, the EM must adequately explain why and how draft DCO provisions have been tailored to meet the specific needs of a particular NSIP and may be required to address novel issues.</i></p>	
55		<p><i>As with the draft DCO which will be altered and revised during the course of the examination, so too will the reasoning in the EM need to be updated accordingly. A fully updated EM must be submitted with the final version of the applicant's draft DCO towards the end of the examination, or earlier where requested by the Examining Authority.</i></p>	<p>This element of the guidance is not applicable at the pre-application stage.</p>

Table 2: Compliance with PINS Advice Note 15

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
	Justifying the approach		

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
1	1.1	<p><i>The Explanatory Memorandum is an aid to the Examining Authority (ExA), to Interested Parties and to the [SoS] as decision-maker to help understand what is proposed in the draft Development Consent Order (DCO), why particular provisions have been included and from where the wording has been derived. The Explanatory Memorandum explains why draft DCO provisions have been tailored to meet the specific needs of a particular Nationally Significant Infrastructure Project (NSIP) (and may be required to address novel issues). It should also explain why the provisions are required, having regard to the scope and breadth of powers contained in the [2008 Act].</i></p>	<p>As well as identifying the precedent of the relevant provision, the EM (EN010166/APP/3.2) justifies why this is necessary in the context of the Proposed Development.</p>
2	1.2	<p><i>A thorough justification should be provided in the Explanatory Memorandum for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power.</i></p>	<p>The EM (EN010166/APP/3.2) includes an explanation of and justification for every article and requirement within the Draft DCO (EN010166/APP/3.1). Each explanation includes clarification of the precedent used for such provision or whether novel drafting is used.</p>
3	1.3	<p><i>There is no longer a requirement to submit a tracked changed version of the draft DCO which compares the wording against The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.</i></p>	<p>The Applicant has not submitted such document with the Application because this is no longer required.</p>

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
4	1.4	<p><i>A well-developed Explanatory Memorandum can potentially reduce the number of examination questions an ExA may need to ask about the draft provisions comprising the draft DCO. For each provision, the ExA is likely to want to be satisfied about certain matters, such as:</i></p> <ul style="list-style-type: none"> • <i>The source of the provision (whether it be a previous made DCO or Transport and Works Act Order, or a novel provision).</i> • <i>The section/ Schedule of the [2008 Act] under which it is made.</i> • <i>Why it is relevant to the Proposed Development.</i> • <i>Why the Applicant considers it to be important/ essential to the delivery of the Proposed Development.</i> 	<p>The EM (EN010166/APP/3.2) includes the following details against each article and requirement:</p> <ul style="list-style-type: none"> • The precedent and origin of the provision – for example, whether it derives from a Model Provision, another DCO or previous Transport and Works Act Orders. • Where applicable, the relevant provision of the 2008 Act under which such provision is made. • The relevance of each provision to the Proposed Development. • Why such provision is required for the delivery of the Proposed Development.
5	1.5	<p><i>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. It is not sufficient for an Explanatory Memorandum to simply state that a particular provision has found favour with the [SoS] previously; the ExA and [SoS] will need to understand why it is appropriate for the scheme</i></p>	<p>As well as identifying the precedent of the relevant provision, the EM (EN010166/APP/3.2) justifies why this is necessary in the context of the Proposed Development. For example, Article 9 (disapplication, application and modification of legislative provisions and modifications to section 36 consent) of the Draft DCO (EN010166/APP/3.1) specifically modifies extant legislation to avoid conflicts with the Proposed Development and existing regimes.</p>

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<p><i>applied for. Any divergence in wording from the consented DCO drafting should also be explained. Note, though, that policy can change and develop.</i></p>	
6	1.6	<p><i>Where applicants are seeking to include specific wording or apply a particular approach from a different statutory regime in a draft DCO, the reasons for doing so and the relevance of this to the application should also be made clear in the Explanatory Memorandum. For example, where an applicant has used wording from an Order made under the Transport and Works Act 1992, the particular Order in question should be clearly identified and the reason for including this wording in the draft DCO explained. Applicants will again need to consider whether such a provision is within the powers of the [2008 Act] and include comments on this point in the Explanatory Memorandum.</i></p>	<p>Where wording from alternative regimes is drawn upon for inclusion in the Draft DCO (EN010166/APP/3.1), this is explained in the EM (EN010166/APP/3.2). For example, in relation to Article 45 (operational land for the purposes of the 1990 Act), it is explained that "<i>the land within the Order limits is to be treated as the operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990. Although section 264 of the 1990 Act is entitled "cases in which land is to be treated as not being operational land", subsections (3) and (4) set out cases in which land is to be treated as operational land. This article was included in the model provisions as article 35. This article is necessary to ensure that development is correctly classified under the Town and Country Planning Act 1990 and benefits from the appropriate permitted development rights.</i>"</p>
DCO form and language – general approach			
7	2.1	<p><i>A DCO must be made in the form of a validated [SI] if, as is usually the case, it includes 'legislative provisions' that for example apply,</i></p>	<p>The Draft DCO (EN010166/APP/3.1) is in the form of an SI and a SI Validation Statement</p>

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<p><i>amend or exclude other statutory provisions (see section 117(4) and section 120(5) of the [2008 Act]). SIs need to conform to a template which is publicly available on the UK Legislation Publishing website (National Archives). The template contains essential formatting for SIs.</i></p>	<p>(EN010166/APP/3.3) has been submitted with the Application.</p>
8	2.2	<p><i>Applicants will need to obtain access to the online SI template and associated validation system which assesses whether the drafting in an instrument agrees with the rules for drafting within the template. The Planning Inspectorate's Case Manager will fill in the relevant application form on behalf of the Applicant and submit it to the National Archives. Please contact the Planning Inspectorate in case of any difficulty obtaining access to the template.</i></p>	
9	2.3	<p><i>The SI template may be updated periodically. Applicants should contact the Planning Inspectorate's Case Manager to ensure they are using the latest template.</i></p>	
10	2.4	<p><i>All copies of the draft DCO submitted to the Planning Inspectorate (including the Applicant's final draft DCO submitted towards the end of the Examination) must have been cleared through the validation process and be accompanied by a copy of the Validation Success email which evidences that the draft DCO is error free and on the correct version of SI template. Should draft</i></p>	

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<i>DCOs be submitted with errors or without a successful validation email, applicants will be asked to resolve the errors and resubmit with a Validation Success email.</i>	
Drafting conventions			
11	3.1	<p><i>As mentioned above, it is common for applicants to seek out and adopt drafting conventions from previously made DCOs. It may also assist applicants to consider the drafting conventions of made DCOs published by the same department as would authorise their DCO, which may help to identify that department's drafting preferences. However, applicants should note that policy does change and develop.</i></p>	<p>The Draft DCO (EN010166/APP/3.1) draws upon precedented drafting from previously made DCOs of a similar nature. As explained further in the EM (EN010166/APP/3.2), each provision has also been considered in the context of the specific Proposed Development and current policy applicable to the Proposed Development.</p>
12	3.2	<p><i>Where Deemed Marine Licences or other deemed consents or licences are included within a draft DCO, they must also follow the statutory drafting conventions for SIs. However, note that they are also self-contained licences and need to not be dependent on definitions in the body of the draft DCO.</i></p>	<p>As the Proposed Development is located in Wales, there is no Deemed Marine Licence included within the Draft DCO (EN010166/APP/3.1).</p>
13	3.3	<p><i>Guidance is publicly available from the National Archives website and should be followed by applicants. In particular applicants should:</i></p> <ul style="list-style-type: none"> <i>• provide footnotes in relation to statutory provisions referred to in the SI to provide the user of the SI with information about</i> 	<p>The Draft DCO (EN010166/APP/3.1) has been drafted so that it complies with the guidance for drafting SIs as follows:</p> <ul style="list-style-type: none"> <i>• Footnotes are included for statutory provisions referred to in the drafting.</i>

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<p><i>relevant amendments or extensions to, or applications of, enactments mentioned in the instrument;</i></p> <ul style="list-style-type: none"> <i>use gender-neutral drafting (for example avoiding the use of 'he' or 'she' to refer to the [SoS] or other persons, unless referring to a particular living individual);</i> <i>provide an adequate preamble with recitation of powers;</i> <i>avoid use of the words 'shall' or 'will' (because of ambiguity over whether they are an imperative or a statement of future intention);</i> <i>avoid the word 'may' (to avoid ambiguity over whether it is permissive or stating that it is uncertain whether something is to occur);</i> <i>avoid archaisms (for example 'therewith', 'aforesaid');</i> <i>not use obliques in operative text (because of ambiguity whether they signify 'and' or 'or');</i> <i>spell out 'metres', 'millimetres' etc throughout (and not use 'm', 'mm' etc); and</i> <i>if a paragraph is included in the Interpretation Article saying that distances, directions, lengths, areas etc are approximate, make sure that in the rest of</i> 	<ul style="list-style-type: none"> Gender neutral drafting is used so that 'he/his' and 'she/her' drafting is avoided. Gender specific drafting is only used to refer to 'His Majesty'. Preamble text has been included prior to Part 1 to set the context for the SI's purpose and enabling powers. Unless context provides that 'shall' or 'will' are the most appropriate terms to use, 'must' has been used instead where appropriate to do so. Unless context provides that 'may' is the most suitable word, this has been avoided where possible to ensure greater certainty as to the meaning of the drafting. Archaisms have been avoided in the drafting. 'and/or' wording has been avoided so there is clarity in the drafting. Distances, lengths and other measurements are spelled out in full. Article 2 (interpretation) confirms that all distances are approximate and so this statement has not been duplicated elsewhere within the Draft DCO (EN010166/APP/3.1).

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<i>the order the word 'approximately' in conjunction with any of these dimensions does not appear.</i>	
14	3.4	<i>Before an application is made to the Planning Inspectorate, the draft DCO should be thoroughly checked to remove typographical errors and to ensure consistency across the whole document. These checks should also be undertaken during the Examination, whenever changes are made that affect the draft DCO.</i>	A thorough proofread of the Draft DCO (EN010166/APP/3.1) has taken place to check and remove drafting errors.
Other drafting considerations			
15	4.1	<i>Applicants are encouraged to agree Protective Provisions with the protected party(ies) prior to submitting the application for development consent. Where agreement on Protective Provisions has not been reached during the Preapplication stage, applicants should, as a minimum, submit with their application the standard Protective Provisions for all relevant protected parties with any amendments that the Applicant is seeking annotated with full justification included within the Explanatory Memorandum.</i>	The Applicant made efforts to engage with statutory undertakers during the pre-application stage and has agreed the form of wording for certain protective provisions included at Schedule 13. Engagement remains ongoing with the remaining statutory undertakers in order to come to an agreed form but where agreement has not quite been reached, the Applicant's preferred form of wording has been included at Schedule 13 of the Draft DCO (EN010166/APP/3.1) . The EM (EN010166/APP/3.2) provides further detail on the status of agreement with statutory undertakers on protective provision drafting.
16	4.2	<i>Where the Applicant is not proposing to include draft Protective Provisions for a Statutory Undertaker that has been identified as such by the Inspectorate (under Regulation 11 of The</i>	

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<p><i>Infrastructure Planning (Environmental Impact Assessment) Regulations 2017), the Applicant needs to ensure that the Consultation Report explains why Protective Provisions for that Statutory Undertaker are not sought or required. Ideally this information will be provided as a table listing all of the Statutory Undertakers identified by the Inspectorate with either:</i></p> <ul style="list-style-type: none"> • <i>a link to the proposed draft Protective Provisions; or</i> • <i>a brief explanation why the Statutory Undertaker is not affected by the application and/ or why Protective Provisions are not required.</i> 	<p>Detail regarding engagement and agreement regarding statutory undertakers has been included within the EM (EN010166/APP/3.2) as opposed to the Consultation Report (EN010166/APP/5.1).</p>
17	4.3	<p><i>Submitting blank Protective Provisions Schedules is not acceptable and is likely to pose a serious risk to the acceptance of an application under s55 of the [2008 Act].</i></p>	<p>There are no blank protective provision schedules within the Draft DCO (EN010166/APP/3.1).</p>
18	4.4	<p><i>It is common for Protective Provisions to be drafted in unison with the protected party(ies) or by them first hand. Applicants should ensure that any Protective Provisions drafted by others appropriately align with the terminology and style of the draft DCO and are suitably drafted for use in an SI. If Protective Provisions for more than one protected party are included in a single Schedule, SI drafting requires the numbering of the paragraphs to follow sequentially throughout</i></p>	<p>As noted above, the Applicant has engaged with relevant statutory undertakers to progress drafting of the protective provisions. As explained in the EM (EN010166/APP/3.2), the Applicant has either applied its own drafting for Parts 1 and 2 or adapted statutory undertaker drafting for all other Parts to ensure it this aligns with the drafting elsewhere within the document</p>

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<p><i>the Schedule and not re-start at '1' with each part (as with all textual Schedules in several parts). This approach should be adopted in the draft DCO submitted with the application and in each amended draft submitted during the Examination where Protective Provisions are changed.</i></p>	<p>as well as what will be required to carry out the Proposed Development.</p> <p>One schedule (Schedule 13) covers all of the protective provisions secured by the Draft DCO (EN010166/APP/3.1). The paragraph numbering continues sequentially across parts of the Schedule.</p>
19	4.5	<p><i>If, for good reason, an applicant prefers to provide a separate Schedule for each protected party, the paragraph numbering can re-start at paragraph 1 for each Schedule.</i></p>	
References			
20	5.1	<p><i>References to Articles in the draft DCO or sections of Acts should include the heading of the provision (or other concise, explanatory wording) on the first occasion that the reference appears in each Article or each paragraph of a Schedule.</i></p>	<p>Cross references to articles and statutory provisions include the name of the article or section being referred to.</p>
21	5.2	<p><i>Applicants should take care to ensure that the efficacy of any cross-references used in the draft DCO are maintained and checked. These checks are particularly important if and when the draft DCO is revised during the Examination.</i></p>	<p>A thorough cross-check of cross-references has taken place at the pre-application stage and will be repeated throughout the examination to accommodate any updates made to the drafting.</p>
Definitions			
22	6.1	<p><i>Definitions should be applied consistently throughout the draft DCO and should be in lower case. Applicants should note that:</i></p>	<p>Article 2 (interpretation) sets out the definitions used throughout the Draft DCO (EN010166/APP/3.1). For each Schedule, definitions applicable only to that Schedule are</p>

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		<ul style="list-style-type: none"> <i>terms defined in the parent legislation (ie the [2008 Act]) or in the Interpretation Act 1978 do not need to be re-defined in the DCO;</i> <i>they should define, either in the relevant Article or paragraph (if only used once) or in a general definitions Article (if used more frequently), all terms not defined in the [2008 Act] or the Interpretation Act 1978, or where the term uses its ordinary meaning;</i> <i>the use of different definitions for the same term within different parts of the draft DCO should be avoided wherever possible (for example setting out two different meanings of 'apparatus'). If this is unavoidable, then the definition in the Interpretation Article should make clear that it is subject to another definition elsewhere in the draft DCO;</i> <i>generally, a definition for 'The Secretary of State' should not be provided (government departments ask for a general [SoS] to be assumed to allow for future changes to government machinery);</i> <i>care should be taken to ensure that the definitions provided in draft DCOs do not conflict with any of the definitions provided in s235 of the [2008 Act] (where there is</i> 	<p>also established at the outset and then used throughout that Schedule.</p> <p>For the majority, defined terms are lower case, except where using capitalisation is more appropriate. For example, abbreviations such as 'AGI' and 'CEMP' use capital letters, as do company names and terms tied to company names, such as 'ENI UK Limited' and 'ENI Work'.</p> <p>The Applicant notes the following:</p> <ul style="list-style-type: none"> The Draft DCO (EN010166/APP/3.1) cross refers to relevant legislation to avoid repetition where practical. For example, the definitions for 'address' and 'building' directly cross-refer to section 235(1) of the 2008 Act. All terms used throughout the articles and paragraphs are defined within the document. The term "apparatus" is defined generally but then does need to include separate bespoke definitions for certain terms within articles and protective provisions. Therefore, the definition in Article 2 (interpretation) clearly states that the definition applies "save where

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		<p><i>conflict, applicants should explain and provide justification in the Explanatory Memorandum); and</i></p> <ul style="list-style-type: none"> <i>definitions should not be used to try to make substantive provision about what can and cannot be done under a DCO, nor to try to give effect to or introduce Schedules.</i> 	<p>expressly provided otherwise within this Order".</p> <ul style="list-style-type: none"> The term "Secretary of State" is used throughout the Draft DCO (EN010166/APP/3.1) but is not defined. Conflicts between definitions in the Draft DCO (EN010166/APP/3.1) and the 2008 Act have been avoided where possible. The definitions used in the Draft DCO (EN010166/APP/3.1) are not substantive about what may or may not be done and no schedules are independently introduced by a defined term.
23	6.2	<p><i>Where there is more than one relevant planning authority (or other authority), this should be made clear in the definitions.</i></p>	<p>The term "relevant planning authority" is tied to the geographical location of the land to which each relevant provision relates. This future-proofs the Draft DCO (EN010166/APP/3.1) against any future re-organisation of local planning authorities in North Wales. However, as explained in the EM (EN010166/APP/3.2), only FCC would be caught by the definition of 'relevant planning authority' at the time of submission of the Application.</p>
Footnotes			
24	7.1	<p><i>There should be clear footnotes provided for all Acts, SIs, European Union or other international legislation, or external documents referenced in a</i></p>	<p>Footnotes have been provided as required and conform to the guidance for footnotes in SI practice. As well as the front-end of the</p>

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		<i>draft DCO, which must conform to the guidance on footnotes in SI practice (for legislation, the footnote should identify relevant amendments to specific provisions). This practice should apply throughout the draft DCO and its Schedules. This includes any draft Deemed Marine Licence because these also form part of an SI and must therefore meet SI standards, as mentioned above.</i>	document, the Schedules also follow the required footnote guidance.
25	7.2	<i>Applicants must ensure that all footnotes in their final draft DCO submitted to an Examination are still up to date (ie legislation referred to has not been amended or repealed), and reflect the preferred practice in the relevant decision making department.</i>	Prior to submission, the Applicant has undertaken a check to confirm that all footnotes are up to date and accurate. A further check will take place prior to the end of the examination.
Schedules			
26	8.1	<i>Schedules in DCOs must be given effect by an operative Article in the main body of the DCO. This may be by an express provision that the Schedule is to have effect or by clear implication (such as where the Article which grants development consent does so by reference to the Schedule which describes the Authorised Development). The Schedule should also include a shoulder reference to that operative Article, and such references should either be the first Article that mentions the Schedule, or all the Articles that</i>	All Schedules in the DCO are given effect by an article and ordered by reference to the first article which cross-references to such schedule. For example, Schedule 1 (authorised development) of the Draft DCO (EN010166/APP/3.1) is first referred to in Article 2 (interpretation) when defining the 'authorised development' and this is then given effect by Article 3 (Development consent etc. granted by the Order), where development consent is granted for the

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		<i>mention the Schedule. A consistent approach should be adopted throughout the DCO.</i>	'authorised development' so defined by reference to Schedule 1.
27	8.2	<i>To assist the reader in navigating the draft DCO, Schedules should be numbered according to the order they are mentioned in the substantive Articles in the draft DCO.</i>	
Paragraphs			
28	9.1	<i>Paragraphs in the draft DCO should usually consist of a single sentence and applicants should avoid the use of long sentences.</i>	All paragraphs consist of a single sentence and long sentences are avoided where practical.
Numbering			
29	10.1	<i>Numbering within Articles and Schedules should follow the guidance at National Archives. Please see advice above (paragraph 4.4) in relation to the numbering of Protective Provisions where included in draft DCO multi-part Schedules. This practice applies to all textual Schedules in several parts.</i>	The Article and Schedule numbering follows the relevant guidance and multi-part schedules (such as Schedule 13 (protective provisions) of the Draft DCO (EN010166/APP/3.1)) continue paragraph numbering across parts).
30	10.2	<i>Applicants should avoid the use of very long lists where the contents need to be numbered with roman numerals or lettered (for example, sub-divisions of a single numbered Work in Schedule 1, where a recent example extended to '(ttt)'). The SI template is unable to cope well with the formatting of such long numbering/ lettering.</i>	The longest lists of works in Schedule 1 of the Draft DCO (EN010166/APP/3.1) run to xxv under Work No. 1(i) and (bb) for Site Wide Works. Such length of list is necessary due to the complexity of the Proposed Development. This numbering has not caused any issues with SI formatting.

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31	10.3	<p><i>In the font mandated by the template for SIs, the character for the numeral 'one' and the lower case equivalent of the letter 'L' are indistinguishable from one another visually. When determining a numbering/ lettering scheme (for example, for individual land plots) which also needs to be referred to in the draft DCO, applicants should use a scheme that does not run the risk of ambiguity between these two characters.</i></p>	<p>The lower case 'L' is not used to describe any works other than within the list of site wide works, where the length of the list makes it unavoidable to use.</p>
Certification articles			
32	11.1	<p><i>In a draft DCO certification Article, applicants should avoid referring to 'any other plans or documents referred to in this Order' since this is insufficiently clear and lacks precision.</i></p>	<p>Article 46 (certification of plans etc.) of the Draft DCO (EN010166/APP/3.1) cross refers to Schedule 14 (documents and plans to be certified) which specifies a closed list of documents to be certified.</p>
33	11.2	<p><i>Plans and other documents which are required to be certified such as the Land Plans and Works Plans should be specifically listed in the relevant Article. Applicants should set out the titles and numbers of such documents, either in the certification Article or, if there are a large number of documents, in a separate Schedule or Schedules to the DCO.</i></p>	<p>No reference to 'any other plans or documents referred to in this Order' is made.</p>
34	11.3	<p><i>It is common for the Environmental Statement (ES) to be certified, not least because adherence with the assessment findings may be relevant when a discharging authority is considering</i></p>	<p>Schedule 14 (documents and plans to be certified) of the Draft DCO (EN010166/APP/3.1) specifies the documents to be certified as true copies by the SoS. The</p>

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		<p><i>whether or not to discharge Requirements. However, during the course of an Examination, applicants may also provide 'environmental information' which affects the findings of the ES and which may be relied upon for the purposes of the Examination required by Regulation 21 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. If during the course of an Examination 'environmental information' is provided which affects the findings in the ES then applicants should consider if this information should also form part of the certification of the ES since it may have been relied upon by the decision maker and incorporated into the Requirements as mitigation measures.</i></p>	<p>ES (EN010166/APP/6.1-6.4) is included as a document to be certified.</p>
Preambles and explanatory notes			
35	12.1	<p><i>Draft DCOs must include a preamble, briefly setting out details of the submission, examination and determination of the application, citing relevant statutory provisions.</i></p>	<p>Preamble text has been included prior to Part 1 of the Draft DCO (EN010166/APP/3.1) to set the context for the SI's purpose and enabling powers.</p>
36	12.2	<p><i>Draft DCOs must also, after the Schedules, include a brief explanatory note, explaining the purpose of the DCO, and what it would permit the Applicant to do if consented. This must also set out where copies of the plans and other documents, to be certified under the DCO, may be inspected and when. The agreement reached</i></p>	<p>An explanatory note is included at the end of the Draft DCO (EN010166/APP/3.1) to explain that the Order grants development consent for the Proposed Development, including the compulsory purchase of land. It also explains where plans certified in accordance with article</p>

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		<i>with the document host/ venue should be confirmed to the Examination.</i>	46 (certification of plans etc.) can be inspected free of charge.
Tracking changes in the draft DCO throughout the Examination			
37	13.1	<p><i>Changes to the draft DCO may well be put forward by the Applicant and others during the course of the Examination. This may be for several reasons as follows:</i></p> <ul style="list-style-type: none"> • <i>responding to questions raised by the ExA;</i> • <i>responding to representations made by Interested Parties; or</i> • <i>responding to agreements reached with other Interested Parties, for example in relation to Protective Provisions or revisions to Requirements.</i> 	This element of the advice is not applicable at the pre-application stage.
38	13.2	<p><i>The Examination Timetable will make provision for revised version(s) of the draft DCO to be submitted by the Applicant. Where this is not expressly required in the timetable, applicants may choose to submit revised drafts at other times during the Examination; for example to meet timetabled deadlines for the submission of Written Representations. It is important that there is a clear audit trail to identify both changes to the draft DCO made during the Examination and the reasons why those changes have been made. This will greatly assist the [SoS] in understanding</i></p>	This element of the advice is not applicable at the pre-application stage.

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<i>how the form of any draft DCO that is recommended by the ExA has come about.</i>	
39	14.1	<p><i>It is important to maintain a clear audit trail of changes made to the draft DCO. To achieve this, applicants should ensure that each revised draft DCO is accompanied by:</i></p> <ul style="list-style-type: none"> <li data-bbox="714 541 1372 759"><i>• a track changed version of the draft DCO highlighting any changes made from the previous version (and identified by a suitable filename) or a version using suitable compare software which similarly identifies the changes;</i> <li data-bbox="714 763 1372 1140"><i>• a track changed draft DCO version highlighting all of the changes made from the version of the draft DCO originally submitted with the application (and identified by a suitable filename) or a version using suitable compare software which similarly identifies the changes must be submitted at the end of the examination and, depending on the number of versions, at points during the examination; and</i> <li data-bbox="714 1144 1372 1356"><i>• a supporting explanatory document, such as drafting notes or table of proposed changes. This should explain any amendments in a proportionate and concise way and be appropriately updated during the Examination. This is so that</i> 	This element of the advice is not applicable at the pre-application stage.

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<p><i>Interested Parties and the ExA are sufficiently aware of the purpose and effect of any proposed revisions to draft DCO provisions.</i></p>	
40	14.2	<p><i>A fully updated Explanatory Memorandum must be submitted with the final version of the Applicant's draft DCO submitted towards the end of the Examination. It will therefore be necessary for applicants to keep a detailed and comprehensive audit of changes made to the draft DCO during the course of the Examination to inform the final version of the Explanatory Memorandum. It would therefore seem in the best interests of applicants to update the Explanatory Memorandum in conjunction with each update to the draft DCO during the course of the Examination. If an updated Explanatory Memorandum could be submitted with each update to the draft DCO this would seem to help everyone involved in the examination of the application. The increased clarity provided by regular updates to the Explanatory Memorandum may also reduce the number of questions posed to the Applicant and/ or challenges raised in response to suggested changes.</i></p>	<p>This element of the advice is not applicable at the pre-application stage.</p>
41	14.3	<p><i>Where Interested Parties other than the Applicant have suggested amended or new draft DCO provisions during the course of the Examination,</i></p>	<p>This element of the advice is not applicable at the pre-application stage.</p>

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<i>they should also provide a reasoned explanation in support of the proposed amendment or new provision.</i>	
Key issues for DCO drafting			
42	15.1	<p><i>Section 120 of the [2008 Act] provides that a DCO may impose Requirements in connection with the development for which consent is granted. Such Requirements may correspond with conditions which could have been imposed on the grant of any permission, consent or authorisation (for example planning permission under the Town and Country Planning Act 1990 (the TCPA1990)) which would have been required for the development if it had been consented through a different regime.</i></p>	<p>Requirements are included within the Draft DCO (EN010166/APP/3.1) at Schedule 2. The Applicant considers that all requirements are precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects.</p>
43	15.2	<p><i>The law and policy relating to planning conditions (in particular, in England, relevant paragraphs of the National Planning Policy Framework and associated Planning Practice Guidance), imposed on planning permissions under the TCPA1990, will generally apply when considering Requirements to be imposed in a DCO in relation to the terrestrial elements of a proposed NSIP. Requirements should therefore be precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects.</i></p>	

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
Securing mitigation			
44	16.1	<p><i>An application may have significant adverse environmental effects that require mitigation; such effects will be identified in the accompanying ES and/ or relevant environmental information. Any mitigation measures relied upon in the ES must be robustly secured and this will generally be achieved through Requirements in the draft DCO. Mitigation that is identified in the ES as being required must also be clearly capable of being delivered.</i></p>	<p>Mitigation plans are secured by requirements of the Draft DCO (EN010166/APP/3.1). For example, the CEMP needs to be submitted for approval by the relevant planning authority prior to the commencement of any relevant stage and such plan must be in general accordance with the Framework CEMP (EN010166/APP/6.5).</p>
45	16.2	<p><i>Mitigation may include adherence with control measures established through relevant management plans. Requirements can be used to secure the preparation and specification of details for such plans. The plans can be applicable to various stages in the life-cycle of the Proposed Development but may typically include: a Code of Construction Practice, a Construction Environmental Management Plan and a Site Waste Management Plan.</i></p>	<p>The Applicant has made use of management plans secured by requirement to provide for necessary mitigation relied upon in the ES (EN010166/APP/6.1-6.4). Such plans include a Framework CEMP (EN010166/APP/6.5), Outline Landscape and Ecological Management Plan (EN010166/APP/6.9) and Framework Construction Traffic Management Plan (EN010166/APP/6.6).</p>
46	16.3	<p><i>A 'Table of Mitigation' should be provided, usually as part of the ES, setting out precisely how and where mitigation measures relied upon in the ES are secured in the draft DCO.</i></p>	<p>The Commitments Register (EN010166/APP/6.10) sets out precisely how and where mitigation measures relied upon in the ES (EN010166/APP/6.1-6.4) are secured in the Draft DCO (EN010166/APP/3.1).</p>
Providing flexibility – approving and varying final details			

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
47	17.1	<p><i>When preparing the draft DCO, applicants should consider carefully the aspects of the Proposed Development that require flexibility, particularly where later stage approval by a relevant discharging authority is required. Any provisions in the draft DCO that allow for flexibility must be thoroughly justified within the Explanatory Memorandum, and assessed within the ES. (The general approach to flexibility can be set out in other application documents and cross-referenced to the Explanatory Memorandum, where appropriate.)</i></p>	<p>Due to the nature of DCOs, it is necessary to incorporate a degree of flexibility in the drafting. Such flexibility has been sought through the drafting of the Draft DCO (EN010166/APP/3.1), but any such flexibility still remains within the envelope of what has been assessed within the ES (EN010166/APP/6.1-6.4).</p>
48	Good Practice Point 1	<p><i>If a Requirement imposes an obligation on the Applicant to seek approval of final details in a scheme, the Requirement should not be drafted in a way which allows the discharging authority to dispense with the need for a scheme altogether. Neither should it enable the discharging authority to vary the scheme in writing such that the scheme then departs from the principles fixed by the application.</i></p> <p><i>Applicants should, in the Explanatory Memorandum submitted with the application, provide justification for any flexibility which allows details to be approved after the grant of development consent. Any relevant case law should be cited where it is relied upon.</i></p>	<p>Tailpiece wording is applied for approvals under requirements via paragraph 1(2) of Schedule 2 (requirements) of the Draft DCO (EN010166/APP/3.1). Many of the requirements require submission of details for approval by the local planning authority. Those requirements are drafted with a view to enabling the undertaker to obtain approval for part of the authorised development and not require it to discharge the requirement for the whole of the authorised development. This permits an appropriately flexible approach to the discharge of requirements by the undertaker and provides an appropriate balance between development not starting until details are approved and allowing other parts of the authorised development (where details are</p>

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		<p><i>The updated Explanatory Memorandum which accompanies the Applicant's final draft DCO submitted towards the end of the Examination must include any further justification necessary for maintaining such flexibility in the light of the examination of the draft DCO and its Requirements, the views of the relevant local authorities and Interested Parties and the rationale for imposing the Requirement.</i></p>	<p>already approved) to be constructed. As further explained in the EM (EN010166/APP/3.2), this approach is appropriate and precedented. The approach to tailpieces is such that variations are only permitted where there would be no materially new or materially different environmental effects to the original position. Article 2(9) (interpretation) then clarifies that such variation does not prevent approval of updates that would have a materially beneficial impact to the environment.</p> <p>The EM (EN010166/APP/3.2) provides further detail on how approval of details would work in practice.</p>
49	17.2	<p><i>Paragraph 82 of the government's Planning Act 2008: guidance on the pre-application process advises that a Requirement may be proposed which allows details of 'particular finalised aspects' of a development to be submitted later to the relevant discharging authority.</i></p>	<p>The approach of allowing finalised details to be submitted post-consent has been adopted in the Draft DCO (EN010166/APP/3.1). For example, following grant of development consent but prior to commencement of any relevant stage of development, the CEMP needs to be submitted for approval by the relevant planning authority and such plan must be in general accordance with the Framework CEMP (EN010166/APP/6.5) that will be certified pursuant to the Order.</p>
50	17.3	<p><i>Applicants should be aware that details fixed by the terms of the DCO can only be changed if</i></p>	<p>No tailpieces which would allow the undertaker to depart substantially from the terms of the</p>

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		<p><i>authorised, and following adherence with the prescribed approach explained in section 153 of and Schedule 6 to the [2008 Act]. Furthermore, it is not acceptable to circumvent the prescribed process in Schedule 6 by seeking to provide another route to approving such changes or variations, by a person other than the [SoS] who made the DCO, for example by applying the provisions of section 73 and/ or section 96A of the TCPA1990.</i></p>	<p>Draft DCO (EN010166/APP/3.1) have been included in the drafting.</p>
51	17.4	<p><i>Therefore, adding a tailpiece (a tailpiece is a mechanism inserted into a condition (or by analogy a Requirement) providing for its own variation) such as the one below would not be acceptable because it might allow the discharging authority to approve a change to the scope of the Authorised Development applied for and examined, thus circumventing the statutory process:</i></p> <p><i>The authorised development must be carried out in accordance with the principles set out in application document [x] [within the Order limits] unless otherwise approved in writing"</i></p>	
52	17.5	<p><i>On the other hand, a Requirement might make the development consent conditional on the discharging authority approving detailed aspects of the development in advance (for example, the relevant planning authority approving details of a</i></p>	<p>As noted at row 49 above, this approach has been adopted by the Applicant.</p>

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<i>landscaping scheme). Where the discharging authority is given power to approve such details it will be acceptable to allow that body to approve a change to details that they had already approved. However, this process should not allow the discharging authority to approve details which are outside the parameters authorised within any granted DCO.</i>	
53	17.6	<i>There is limited scope for allowing corrections to a granted DCO. Corrections are not an opportunity to include something which was accidentally omitted by the relevant parties.</i>	This element of the advice is not applicable at the pre-application stage.
Complying with Environmental Impact Assessment requirements			
54	18.1	<i>A DCO should only authorise Environmental Impact Assessment (EIA) development which has been assessed in accordance with the EIA Regulations.</i>	The ES (EN010166/APP/6.1-6.4) submitted with the Application fully assesses the development proposed to be authorised by the Draft DCO (EN010166/APP/3.1) .
55	18.2	<i>Particular care should also be taken when drafting a power to 'maintain' so that it does not authorise development which may result in significant environmental effects not already assessed. Neither should the power to maintain permit the construction of what is effectively a different project from that consented or its removal (although the removal and replacement of part(s) only of an Authorised Development may in certain circumstances be appropriate).</i>	The definition of "maintain" included within the Draft DCO (EN010166/APP/3.1) is preceded by the HyNet Carbon Dioxide Pipeline Order 2024. As further detailed in the EM (EN010166/APP/3.2) , the list of maintenance activities is considered appropriate since it affords the flexibility required to enable the undertaker to respond to the range of maintenance activities that may

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		<i>Applicants are encouraged to engage in sufficiently early consultation with the appropriate bodies to seek to agree a definition of maintain and the wording of the corresponding maintenance Article.</i>	need to be undertaken during the lifetime of the authorised development.
56	Good Practice Point 2	<i>Applicants should take care to ensure that the definition of maintain (if included in the draft DCO) does not seek to authorise activities which may generate significant effects beyond those assessed in relevant environmental information, notably the ES.</i>	The definition of "maintain" includes the text "provided these do not give rise to any materially new or materially different environmental effects identified in the environmental statement" to ensure that activities authorised under this definition will not generate significant effects beyond those assessed.
Discharging Requirements			
57	19.1	<i>Section 120(2)(b) of the [2008 Act] allows for Requirements to include the obtaining of approvals from the [SoS] 'or any other person'. In many cases, the relevant planning authority for the area(s) within which the development is situated, is likely to be the relevant 'person' from which to obtain such approvals. For clarity, such Requirements should generally be drafted to identify the relevant planning authority or authorities by name. This could be made clear in the definitions, for example when defining the 'relevant planning authority'.</i>	The relevant planning authority has been drafted broadly to future proof the Draft DCO (EN010166/APP/3.1) in the event that the name of FCC changes or there is a re-organisation of the local authorities in north Wales, which means a different authority becomes the 'relevant planning authority' for the purposes of requirement discharges. This is standard practice and a precedented approach across a number of DCOs.

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
58	19.2	<p><i>Applicants should engage with the discharging authorities and other key stakeholders at the earliest opportunity (at the Pre-application stage) about the Requirements proposed to be included in the draft DCO and to agree the best approach to discharging the Requirements, for example to agree a proportionate timescale for discharge depending on the extent or complexity of detail reserved for subsequent approval.</i></p>	<p>The Applicant has engaged with FCC on the drafting of the Draft DCO (EN010166/APP/3.1) and no objection to the approach proposed (including related to timescales proposed discharge of requirements) has been raised.</p>
59	Good Practice Point 3	<p><i>It is recommended that a mechanism for dealing with any disagreement between the Applicant and the discharging authority is defined and incorporated in a draft DCO Schedule. For example, including arrangements for when the discharging authority refuse an application made pursuant to a DCO Requirement, or approve it subject to conditions or fail to issue a decision within a prescribed period. The mechanism could also address the fees payable for discharging the Requirements.</i></p> <p><i>The Planning Inspectorate has produced standard drafting for a DCO mechanism to deal with the resolution of such disagreements. The standard wording is provided at Appendix 1 to this Advice Note. Where an applicant seeks for any amendment(s) to be made to the drafting of this standard wording, it should be justified in full in the Explanatory Memorandum.</i></p>	<p>An appeals process has been drafted at paragraphs 26 and 27 of Schedule 2 of the Draft DCO (EN010166/APP/3.1). This drafting is based on the drafting in the HyNet Carbon Dioxide Pipeline Order 2024 as an extant DCO covering the same location as the Proposed Development. This drafting should therefore be acceptable to the discharging authority and consistent with other processes they are used to following for other NSIPs in the area.</p>

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<p><i>Applicants are also encouraged to confirm in the Explanatory Memorandum that the discharging authority has been consulted about and is willing to assume a discharging role. The same applies to any arbitrator named in arbitration provisions.</i></p> <p><i>19.3 If an applicant proposes that the approval of matters be required from a discharging authority other than the relevant planning authority, the Applicant should consult with that discharging authority ahead of submitting the application and consider whether it has the required resources and expertise to perform that function.</i></p>	
Environmental information for subsequent applications			
60	20.1	<p><i>Applicants should note that the procedures under The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 EIA Regulations) must be followed for any subsequent application (to a discharging authority) for approval of matters in pursuance of a Requirement before all or part of the development may be started. (Note The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 continue to apply for projects falling under Regulation 37 of the 2017 EIA Regulations.) The 2017 EIA Regulations include transitional provisions which (where relevant) maintain the applicability of The Infrastructure Planning (Environmental Impact</i></p>	<p>This element of the advice does not apply to the current stage of the Application.</p>

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<p><i>Assessment) Regulations 2009. When submitting an application to the discharging authority the Applicant should therefore consider whether the transitional provisions apply. Where transitional provisions do not apply applicants should consider if the 2017 EIA Regulations require them to provide an updated ES or to request a Screening Opinion from the discharging authority responsible for determining the subsequent application (usually the relevant planning authority) together with a Scoping Opinion.</i></p>	
61	20.2	<p><i>If an applicant intends to provide an updated ES with the subsequent application it must notify the discharging authority and this will trigger the Applicant's publicity requirements. The discharging authority will also need to consider any obligations (for example under Regulation 11(1)(a)) it has to notify prescribed consultation bodies.</i></p>	
62	Good Practice Point 4	<p><i>Requirements may trigger the need for a subsequent application (under the 2017 EIA Regulations). The procedure for considering the environmental effects of such applications is set out in the 2017 EIA Regulations and therefore applicants do not need to prescribe the way in which the discharging authority should take account of environmental effects. (For example, by confining the scope of what may be approved</i></p>	

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		<p><i>in a subsequent application to matters which were the subject of the original ES.)</i></p> <p><i>Applicants should however ensure, when applying (under section 120 of the [2008 Act]) any Orders, Rules or Regulations made under other legislation in relation to a consent, agreement or approval of a discharging authority under a Requirement (or when a bespoke procedure is created for discharging Requirements – see section 21), that the Article could not be construed as circumventing the provisions of the 2017 EIA Regulations. This could be achieved for example by inserting wording in relation to the applied provisions such as “insofar as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the [2008 Act]”.</i></p>	
63	20.3	<p><i>If the relevant authority considers that the environmental information previously provided in the ES is adequate to assess the ‘environmental effects of the development’ (Regulation 22(2)) this must be taken into consideration when deciding the application for approval.</i></p> <p><i>Alternatively, if the relevant authority considers that the environmental information is not adequate it must adhere with the requirements of the EIA Regulations including giving reasons.</i></p> <p><i>Relevant authorities are advised to take their own legal advice on this point.</i></p>	

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64	20.4	<p><i>Whether or not an updated ES is required to meet the obligations under the 2017 EIA Regulations does not detract from the fact that the Applicant must still provide all of the information sought by the Requirement for approval before any part of the Authorised Development can commence.</i></p>	
<p>Defining 'commencement' – advance works and environmental protection</p>			
65	21.1	<p><i>In some decisions the [SoS] has removed definitions of 'commence' and/ or 'preliminary works' which could have allowed for a range of site preparation works (such as demolition or de-vegetation) to take place before the relevant planning authority had approved details of measures to protect the environment under the Requirements.</i></p>	<p>A definition of site enabling works has been included within the Draft DCO (EN010166/APP/3.1) which defines a specific list of activities that can be undertaken without formal 'commencement' of development taking place. As explained in the EM (EN010166/APP/3.2), all activities listed within this definition have been assessed as part of the EIA and it has been determined that the mitigation required for the Proposed Development prior to commencement is not required in relation to the listed activities.</p>
66	Good Practice Point 5	<p><i>If applicants consider that such an approach is appropriate in the particular circumstances of their proposed NSIP, they should provide reasons in the Explanatory Memorandum.</i></p>	<p>The EM (EN010166/APP/3.2) provides further detail on the approach to site enabling works.</p>
67	21.2	<p><i>The definitions were removed because the [SoS] considered them to be inappropriate, particularly where such advance works were themselves</i></p>	<p>As explained in the EM (EN010166/APP/3.2), all activities listed within this definition have been assessed as part of the EIA and it has</p>

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		<i>likely to have significant environmental effects, for example, in terms of noise or impacts on protected species or archaeological remains.</i>	been determined that the mitigation required for the Proposed Development prior to commencement is not required in relation to the listed activities.
Hedgerows and trees			
68	22.1	<p><i>Applicants may wish to include an Article within the draft DCO to allow the removal of hedgerows (if necessary) for the purposes of carrying out the Authorised Development. The draft DCO can include an Article with powers which remove the obligation on the Undertaker to first secure consent under The Hedgerows Regulations 1997. (In Wales, such a power can only be included with the consent of Natural Resources Wales.) It is recommended that DCO Articles of this kind are made relevant to the specific hedgerows intended for removal. To support the ExA, the Article should include a Schedule and a plan to specifically identify the hedgerows to be removed (whether in whole or in part). This will allow the question of their removal to be examined in detail. Alternatively, the Article within the DCO could be drafted to include powers for general removal of hedgerows (if they cannot be specifically identified) but this must be subject to the later consent of the local authority.</i></p>	<p>Article 42 (felling or lopping of trees and removal of hedgerows) of the Draft DCO (EN010166/APP/3.1) provides for the ability to remove hedgerows. This ties to Schedule 12 (removal of hedgerows), which specifies the hedgerows that will be required to be removed as part of the Proposed Development.</p>
69	Good Practice Point 6	<i>Hedgerows affected by the Proposed Development should be identified in a Schedule</i>	Schedule 12 of the Draft DCO (EN010166/APP/3.1) identifies the hedgerows

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		<p><i>to and on a plan accompanying the draft DCO. The Schedule and plan could also helpfully identify those hedgerows that are 'important' hedgerows (see Regulation 4 and Schedule 1 of The Hedgerows Regulations 1997 and section 97 of the Environment Act 1995). This would enable parties such as the relevant planning authority to make submissions on the appropriateness of including such provisions, and the ExA to consider these.</i></p> <p><i>The draft DCO should also include a relevant Schedule and plan identifying the trees likely to be affected that are protected by TPOs and/ or are otherwise protected.</i></p>	<p>to be removed. Within this Schedule, important hedgerows are specifically identified. This Schedule makes reference to a Hedgerow Removal Plan (EN010166/APP/2.8), which is a certified document in the Draft DCO (EN010166/APP/3.1).</p> <p>There are no trees subject to TPOs within the Order limits but there are trees subject to TPOs immediately adjacent to the Accommodation Works Areas.</p>
70	22.2	<p><i>Applicants may also wish to include powers allowing them to fell, lop or cut back roots of trees subject to a Tree Preservation Order (TPO). This power can extend to trees which are otherwise protected by virtue of being situated in a conservation area. To support the ExA inclusion of this power should be accompanied by a Schedule and plan to specifically identify the affected trees.</i></p>	<p>There are no trees subject to TPOs within the Order limits but there are trees subject to TPOs immediately adjacent to the Accommodation Works Areas.</p>
71	22.3	<p><i>Trees subject to TPO and/ or are otherwise protected (and likely to be affected) should be specifically identified. It is not appropriate for this power to be included on a precautionary basis. Proper identification of affected trees will enable</i></p>	

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		<i>the ExA to give full consideration to the particular characteristics that gave rise to their designation and the desirability of continuing such protection.</i>	
Extinguishment of private rights over land			
72	23.1	<i>Sub-sections 120(3) and (4) of and paragraph 2 of Schedule 5 to the [2008 Act] allow a DCO to make provision for the extinguishment of rights over land.</i>	Article 30 (private rights) of the Draft DCO (EN010166/APP/3.1) provides for extinguishment of all private rights or restrictive covenants over land subject to compulsory acquisition so far as their continuance would be inconsistent with the exercise of the compulsory acquisition powers.
72	23.2	<i>An applicant may wish to extinguish private rights over land when it is acquiring land by the use of a Compulsory Acquisition power in the draft DCO or by agreement with the landowner. An applicant may also wish to extinguish private rights over land it already owns or land which is otherwise required for the NSIP.</i>	
73	23.3	<i>The Land Plan accompanying the application must identify any land over which it is proposed to exercise powers of Compulsory Acquisition including any land in relation to which it is proposed to extinguish private rights (Regulation 5 of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009).</i>	
74	23.4	<i>Where an applicant is seeking powers in the DCO to acquire land compulsorily, the drafting of the Article containing the powers should make it clear whether or not the Applicant is also seeking</i>	Article 30 (private rights) of the Draft DCO (EN010166/APP/3.1) includes specific wording that confirms that all private rights or restrictive covenants over land subject to compulsory

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		<p><i>a power to clear the title of the land of all private rights. The Applicant should consider whether the Article should be subject to a power under a separate Article which would allow the Applicant to exclude a particular private right from the blanket extinguishment power.</i></p>	<p>acquisition under article 25 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 25.</p>
75	23.5	<p><i>Section 14A(6) of the Transport and Works Act 1992 and section 134(6A) of the [2008 Act] (both inserted in the respective Acts by SI 2017/16) each provide that a confirmation notice should be sent to the Chief Land Registrar and that it shall be a local land charge. Where land in an order is situated in an area for which the local authority remains the registering authority for local land charges (ie where the changes made by Parts 1 and 3 of Schedule 5 to the Infrastructure Act 2015 have not yet taken effect in that local authority area), the acquiring authority should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority as the registering authority.</i></p>	<p>This element of the advice does not apply to the current stage of the Application but the Applicant will prepare a section 134 notice, as necessary, following grant of development consent.</p>
76	Good Practice Point 7	<p><i>It is suggested that a procedure is set out in the relevant Article such as the giving of notice or reaching agreement with the person who benefits from the right. This would ensure that only those rights which it is essential to extinguish are dealt</i></p>	<p>Article 30 (private rights) of the Draft DCO (EN010166/APP/3.1) includes specific wording that confirms that all private rights or restrictive covenants over land subject to compulsory acquisition under article 25 (compulsory</p>

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		<p><i>with in this way. Any private rights, not just private rights of way, could be dealt with in this way.</i></p> <p><i>This Article could also give the Applicant a power to extinguish all private rights over land it already owns and which is required for the purposes of the development. Again, this power could be subject to the giving of notice or agreement.</i></p>	<p>acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 25.</p>
77	Good Practice Point 8	<p><i>The changes made to Compulsory Acquisition legislation by the Housing and Planning Act 2016 has necessitated amendments to the Compulsory Acquisition provisions in DCOs.</i></p> <p><i>The Silvertown Tunnel Order 2018 provides an example of updated drafting which takes account of these changes, however applicants should be aware that these could be subject to further refinements and may vary depending on a department's drafting preferences.</i></p>	<p>The Draft DCO (EN010166/APP/3.1) adopts drafting from the most up to date DCOs, including drafting that accommodates the Housing and Planning Act 2016 in a similar way to the Silvertown Tunnel Order 2018.</p>
Restrictive Covenants			
78	24.1	<p><i>It may be appropriate to include a power to impose Restrictive Covenants over part of the land which is subject to Compulsory Acquisition or use under the DCO. Before deciding whether or not the power is justified the [SoS] will need to consider issues such as proportionality, the risk that the use of land above or below a structure could be sterilised if it has to be acquired outright in the absence of a power to impose Restrictive</i></p>	<p>Article 30 (private rights) of the Draft DCO (EN010166/APP/3.1) provides for extinguishment of all private rights or restrictive covenants over land subject to compulsory acquisition so far as their continuance would be inconsistent with the exercise of the compulsory acquisition powers.</p>

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<p><i>Covenants or whether there is for example a policy of establishing a continuous protection zone for the infrastructure network which could be secured more efficiently with the benefit of this power (this was the case in the Docklands Light Railway Orders).</i></p> <p><i>By way of background, the inclusion of such powers has been accepted in the case of a few orders made under the Transport and Works Act 1992 where this has been considered justified in the particular circumstances of each case; for example in the circumstances where the proposed railways were to be located on a viaduct or in a tunnel and there was no compelling need to acquire outright the surface of the land above or below the structure but still likely to be an ongoing need for measures to protect the structure and to obtain access to it.</i></p>	
79	Good Practice Point 9	<p><i>Applicants should provide justification which is specific to each of the areas of land over which the power is being sought, rather than generic reasons and include a clear indication of the sorts of restrictions which would be imposed and wherever possible the power should extend only to the particular type of Restrictive Covenant required.</i></p>	

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80	24.2	<p><i>The power to impose Restrictive Covenants over land above a buried cable or pipe, or where a slope contains artificial reinforcement, has been granted in DCOs (Article 22 of the Silvertown Tunnel Order (2018)).</i></p>	
81	24.3	<p><i>In order to enable the [SoS] to consider whether the imposition of Restrictive Covenants is necessary for the purposes of implementing a DCO, and appropriate in human rights terms, applicants should be prepared to fully explain and justify the need for including such powers in the Statement of Reasons. DCO provisions seeking to impose Restrictive Covenants should not be broadly drafted and should identify the land to which they relate and the nature of the Restrictive Covenant.</i></p>	
Application, modification or exclusion of statutory provisions			
82	25.1	<p><i>Under section 120(5)(a) of the [2008 Act] DCOs may apply, modify or exclude an existing statutory provision which relates to any matter for which provision may be made in the DCO.</i></p>	<p>Article 9 (disapplication, application and modification of legislative provisions and modifications to section 36 consent) of the Draft DCO (EN010166/APP/3.1) specifically modifies extant legislation to avoid conflicts with the Proposed Development and existing regimes.</p>
83	25.2	<p><i>The power to apply, modify or exclude an existing statutory provision should be set out in an Article in the main body of the draft DCO. Those provisions that are proposed to be applied, modified or excluded by a DCO should be clearly</i></p>	

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		<i>identified, and, if extensive, identified in a Schedule or Schedules.</i>	
84	Good Practice Point 10	<p><i>Applicants should provide in the Explanatory Memorandum a clear justification for the inclusion of such provisions in the particular circumstances. Where such a modification is novel or unprecedented, particularly where it relates to the proposed modification of public general legislation, applicants should seek the views of any relevant authority or government department which has responsibility for the provisions that would be modified before including them in a draft DCO. Where the consent or authorisation is prescribed, the draft DCO cannot be made unless the relevant regulator consents.</i></p>	<p>The EM (EN010166/APP/3.2) explains why legislative provisions which are amended or disapplied for the purposes of the Proposed Development are necessary.</p>
85	25.3	<p><i>In this context, applicants should also be aware of the opportunities and restrictions (see The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015) under section 150 of the [2008 Act] on removing consent requirements.</i></p>	<p>Disapplication and modification is sought of the following prescribed consents:</p> <ul style="list-style-type: none"> • Provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991. • Sections 23 (prohibition on obstructions etc. in watercourses) and 30 (authorisation of drainage works in connection with a ditch) of the Land Drainage Act 1991.

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
			<ul style="list-style-type: none"> Regulation 6 (permitted work) of the Hedgerows Regulations 1997 is modified so as to read as if there were inserted a new limb to cover the Order. Section 28E (ties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981 is modified so as to read as if there were inserted a new limb to cover the Order. <p>The status of engagement and agreement with the relevant approving bodies can be found in each respective Statement of Common Ground.</p>
DCOs and Deemed Marine Licences			
86	26.1	<p><i>A DCO may 'deem' consent for a Marine Licence under Part 4 of the Marine and Coastal Access Act 2009 (MCAA2009), subject to specified conditions (sub-section 120(4), paragraph 30A of Schedule 5 and section 149A of the [2008 Act]).</i></p>	<p>No Deemed Marine Licence is incorporated to the drafting because it is not possible to deem marine licences in Wales.</p>
87	26.2	<p><i>This power only applies where the activity is to be carried out wholly in one or more of the following: in England; in waters adjacent to England up to the seaward limits of the territorial sea (twelve miles offshore); in a Renewable Energy Zone; and/ or in an area designated under section 1(7) of the Continental Shelf Act 1964, except where the Scottish Ministers have functions.</i></p>	

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88	26.3	<p><i>If, for example, a Deemed Marine Licence is required for activities in Welsh inshore or internal waters (out to 12NM from the baseline) then it could not be deemed by a DCO and consent would have to be sought separately from Natural Resources Wales, to whom this function has been delegated by the Welsh Ministers.</i></p>	
Multiple Deemed Marine Licences			
89	27.1	<p><i>It is considered that there is nothing in the relevant legislation which would prevent a DCO deeming more than one Deemed Marine Licence. This could be advantageous in particular developments, where there may be severable elements to the overall development project.</i></p>	No Deemed Marine Licence is incorporated to the drafting because it is not possible to deem marine licences in Wales.
90	27.2	<p><i>If an applicant proposes that a draft DCO should include more than one Deemed Marine Licence, then they will need to give careful consideration as to how the respective elements of the proposed NSIP are allocated between the draft licences, for example applicable conditions. This is so as to ensure all elements of the NSIP in the marine environment for which development consent is sought are included in one or other of the draft licences, the split between those elements is clearly described in the licences and they are consistent with the authorised NSIP as set out in the DCO. If possible the approach</i></p>	

Ref. No.	Advice Note Paragraph/reference	Extract of Advice Note	Applicant Compliance
		<i>taken should be agreed sufficiently early with the Marine Management Organisation.</i>	
91	Good Practice Point 11	<i>Applicants should give careful consideration to the terms of the transfer Article they include in their draft DCO so as to ensure that it reflects how they envisage the NSIP being operated post-consent and, if possible, avoid potential inconsistencies between how DCO and Deemed Marine Licence transfer arrangements would operate.</i>	
Transfer provisions			
92	28.1	<i>Section 156 of the [2008 Act] provides that a DCO has effect for the benefit of the land and all persons for the time being interested in the land; although this is subject to any contrary provision made in a DCO.</i>	Article 7 (benefit of the Order) of the Draft DCO (EN010166/APP/3.1) confirms who has the benefit of the Order, subject to Article 8 (consent to transfer benefit of Order).
93	28.2	<i>DCOs usually include an Article setting out who enjoys the benefit of the DCO and terms for the transfer of the benefit of any or all of the provisions of the DCO, including any consent that may be required.</i>	Article 8 (consent to transfer benefit of Order) of the Draft DCO (EN010166/APP/3.1) confirms the position regarding any transfer of benefit of the Order, where consent is required and what is required where such consent for the transfer of benefit is needed.
94	28.3	<i>Sub-section 72(7) of the MCAA2009 provides that, on application by the licensee, the licensing authority which granted (or is deemed to have granted) a Deemed Marine Licence may transfer it from the licensee to another person. Whilst this</i>	No Deemed Marine Licence is incorporated to the drafting because it is not possible to deem marine licences in Wales.

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		<p><i>provision does not expressly allow only part of a Deemed Marine Licence to be transferred, sub-section 120(5) (a) of the [2008 Act] provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in a DCO, which would include this provision. It is therefore considered that there is no legal reason to prevent a DCO from allowing part of a Deemed Marine Licence to be transferred, although there may be operational difficulties with such an approach including monitoring compliance and taking enforcement action.</i></p>	
Conditions			
95	29.1	<p><i>Sub-section 71(1)(b) of the MCAA2009 allows a Deemed Marine Licence to be granted subject to such Conditions as the licensing authority thinks fit. These may, under sub-section 71(2), relate to the activities authorised by the licence and precautions to be taken or works to be carried out (whether before, during or after the carrying out of the authorised activities) in connection with or in consequence of those activities. Sub-section 71(3) sets out six matters that may in particular be dealt with by conditions.</i></p>	<p>No Deemed Marine Licence is incorporated to the drafting because it is not possible to deem marine licences in Wales.</p>
96	29.2	<p><i>Whilst the law and policy relating to planning conditions does not necessarily apply to DCO Requirements relating to the offshore elements of</i></p>	

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		<p><i>an NSIP or to Deemed Marine Licence conditions, it is considered that similar principles should apply when drafting these (see paragraph 15.2).</i></p>	
97	Good Practice Point 12	<p><i>Applicants should give careful consideration to which matters should be dealt with in DCO Requirements and Deemed Marine Licence Conditions respectively, and avoid duplication of the same matters in both Requirements and Conditions. If post-decision changes are required to such Requirements/ Conditions, both instruments would need to be altered.</i></p> <p><i>Deemed Marine Licences become self-contained documents and therefore should not be reliant on definitions in or cross references to other elements of the main DCO. In addition, the [SoS] is unable to amend a Deemed Marine Licence post-consent.</i></p> <p><i>Applicants should engage sufficiently early at the Preapplication stage with key relevant consultees so as to seek to agree the wording of draft Requirements and Conditions as much as possible prior to submission of the application for development consent.</i></p>	
98	Good Practice Point 13	<p><i>If, by the end of the Examination, applicants have failed to reach agreement with certain parties on any matter regarding the drafting of the draft DCO, they should continue to seek such</i></p>	<p>This element of the advice does not apply to the current stage of the Application but will be adhered to by the Applicant, as required, in due course.</p>

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		<i>agreement following the Examination, and notify the Planning Inspectorate of any progress (prior to the decision on the DCO application being issued).</i>	
99	Appendix 1	<i>Standard drafting for Article dealing with procedure for discharge of certain approvals.</i>	The Draft DCO (EN010166/APP/3.1) adopts this standard drafting but also incorporates good practice precedent from the HyNet Carbon Dioxide Pipeline Order 2024, which was within the same local authority area as the Proposed Development, in order to ensure consistency for the local planning authority.

References

1. UK Government (April 2024), Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects, <https://www.gov.uk/guidance/planning-act-2008-content-of-a-development-consent-order-required-for-nationally-significant-infrastructure-projects> (accessed 28.05.25).
2. Planning Inspectorate (March 2025), Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders, <https://www.gov.uk/government/publications/nationally-significant-infrastructure-projects-advice-note-fifteen-drafting-development-consent-orders> (accessed 28.05.25).

