The Great Grid Upgrade

Sea Link

# Sea Link

**Volume 3: Development Consent Order**

**Document 3.2 Explanatory Memorandum**

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| **Date** | **Version** | **Status** | **Description / Changes** |
| March 2025 | A | Final | For DCO submission |
| May 2025 | B | Final | Update following s89 Letter |
| August 2025 | C | Final | Update following the second s89 Letter |
| November 2025 | D | Final | Deadline 1 Updates |
| November 2025 | D (Version 2, Change Request) | Final | Updates made for the Change Request |
| January 2026 | E | Final | Deadline 3 Updates |
| February 2026 | F | Final | Deadline 4A Updates |
| March 2026 | G | Final | Deadline 5 Updates |
| April 2026 | H | Final | Deadline 6 Updates |
| April 2026 | I | Final | Deadline 7 Updates |
| September 2026 | J | Final | Post-examination updates |

# 1. Introduction

## 1.1 Purpose of the Explanatory Memorandum

1.1.1 This Explanatory Memorandum explains the purpose and effect of each Article of, and the Schedules to, the draft National Grid (Sea Link) Order ("the Order"), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009[1] (as amended).

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

1.1.3 In particular, it sets out, as per the Planning Inspectorate's *Advice Note 15: Drafting Development Consent Orders*

- the source of the provision within the Order (whether it is bespoke or based on a made Order);
- the section/Schedule of the Planning Act 2008 (the "Act") under which it is made; and
- the reasons why the Article is relevant to the project and considered important and/or necessary to the delivery of the Sea Link Project.

1.1.4 Further guidance published on 30 April 2024 '*Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects*' reiterates the purpose of the Explanatory Memorandum.

## 1.2 Approach Regarding the Model Provisions

1.2.1 The Order is based on the General Model Provisions (the "general model provisions") in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "Model Provisions Order 2009"[2] ), unless otherwise stated[3] . The general model provisions were followed because there are no model provisions for electric lines.

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

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[1] S.I. 2009/2264.

[2] S.I. 2009/2265

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

1.2.3 The Order does not include model provisions which are not relevant or applicable to the proposed development and this Explanatory Memorandum does not seek to explain further their omission.

## 1.3 Genesis of the Order

1.3.1 Paragraph 1.5 of the Planning Inspectorate's Advice Note 15[4] states that *"If a draft DCO includes wording derived from other made DCOs, this should be explained in the Explanatory Memorandum. The Explanatory Memorandum should explain why that particular wording is relevant to the proposed draft DCO, for example detailing what is factually similar for both the relevant consented NSIP and the Proposed Development… the ExA and Secretary of State will need to understand why it is appropriate for the scheme applied for. Any divergence in wording from the consented DCO drafting should also be explained*."

1.3.2 Where there is a departure from the general model provisions, or an Article is based on other precedent orders, an explanation of the new provision is provided. In general, the Order is primarily based on the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024. That project is the most recent precedent for a Development Consent Order granted for high-voltage electricity transmission lines and in particular, bears similarities with the Proposed Project as it consented the installation of new underground electricity transmission line, in addition to new overhead electricity transmission lines. The Order also draws upon the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 as an additional example of a recently consented National Grid project comprising a high-voltage electricity transmission line.

1.3.3 The Project comprises approximately 122 km of marine electric cable between Suffolk and Kent and the Order includes a deemed marine licence under section 66(1) of the Marine and Coastal Access Act 2009. Therefore, due to the primarily offshore nature of the Proposed Project, the Order also draws upon the approach taken in other Development Consent Orders which consented marine electric cable and contain deemed marine licences, such as the East Anglia ONE North Offshore Windfarm Order 2022 and the East Anglia TWO Offshore Windfarm Order 2022. Those Orders granted development consent for two linked NSIPs, namely an offshore generating station in the North Sea, overhead realignment works, and associated development which includes an onshore substation in Friston. Given that these consents have yet to be implemented, the Friston Substation[5] is included in the Proposed Project to achieve a comprehensive consenting position and given the element of geographic overlap in Suffolk, these Orders have been reviewed and considered. The text at paragraph 5.1.13 of this Explanatory Memorandum in relation to Work 1B further explains the relationship with the SPR consents.

1.3.4 Other precedents drawn upon include the National Grid (Richborough Connection Project) Development Consent Order 2017[6], and the National Grid (Hinkley Point C

[4] Published in July 2018.

[5] The name 'Friston Substation' is used throughout the DCO Application solely as a geographic term to identify the site of the substation at Friston. The use of the term is not intended to establish a permanent name for this substation. The Applicant has committed to engage with the local community over a permanent name for this substation, and will continue this process in parallel to the DCO Application.

[6] S.I. 2017/817 (as corrected by S.I. 2018/572).

Connection Project) Order 2016[7] (all of which consented onshore high-voltage electricity transmission lines).

1.3.5 The Development Consent Orders for recently consented projects offshore wind schemes such as the Sheringham Shoal and Dudgeon and Extensions Offshore Wind Farm Order 2024 and the Hornsea Project Four Offshore Wind Farm 2023 have also been taken into account, given the parallels with consenting offshore electric cables. Finally, Development Consent Orders for other buried linear schemes, such as the Southampton to London Pipeline Development Consent Order 2020 [8], and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014[9], have also been considered.

[7] S.I. 2016/49 (as corrected by S.I. 2017/786).

[8] S.I. 2020/1099.

[9] S.I. 2014/2384.

# 2. Purpose of the Order

2.1.1 National Grid Electricity Transmission plc ("National Grid") is applying to the Secretary of State for a development consent order ("DCO") for the Sea Link Project which would authorise works to reinforce the transmission network in the South East of England and East Anglia. The Proposed Project is required to accommodate additional power flows generated from renewable and low carbon generation, as well as accommodating additional new interconnection with mainland Europe.

2.1.2 National Grid owns, builds and maintains the electricity transmission network in England and Wales. Under the Electricity Act 1989, National Grid holds a transmission licence under which it is required to develop and maintain an efficient, coordinated, and economic electricity transmission system.

2.1.3 This would be achieved by reinforcing the network with a High Voltage Direct Current (HVDC) Link between the proposed Friston substation in the Sizewell area of Suffolk and the existing Richborough to Canterbury 400kV overhead line close to Richborough in Kent. This reinforcement would be approximately 138 km long, comprising primarily of a HVDC offshore transmission link, with both HVDC and High Voltage Alternating Current (HVAC) onshore elements

2.1.4 The Proposed Project is split into three distinct elements and includes the following principal components:

- Suffolk Onshore Scheme
  - A connection from the existing transmission network via Friston Substation, including the substation itself. Friston Substation already has development consent as part of other third-party projects. If Friston Substation has already been constructed under another consent, only a connection into the substation would be constructed as part of the Proposed Project.
  - A high voltage alternating current (HVAC) underground cable of approximately 1.9 km in length between the proposed Friston Substation and a proposed converter station (below).
  - A 2 GW high voltage direct current (HVDC) converter station (including permanent access from the B1121 and a new bridge over the River Fromus) up to 26 m high plus external equipment (such as lightning protection, safety rails for maintenance works, ventilation equipment, aerials, similar small scale operational plant, or other roof treatment) near Saxmundham.
  - A HVDC underground cable connection of approximately 10 km in length between the proposed converter station near Saxmundham, and a transition joint bay (TJB) approximately 900 m inshore from a landfall point (below) where the cable transitions from onshore to offshore technology.
  - A landfall on the Suffolk coast (between Aldeburgh and Thorpeness).
- Offshore Scheme

- Approximately 122 km of subsea HVDC cable, running between the Suffolk landfall location (between Aldeburgh and Thorpeness), and the Kent landfall location at Pegwell Bay.

- Kent Onshore Scheme
  - A landfall point on the Kent coast at Pegwell Bay.
  - A TJB approximately 800 m inshore to transition from offshore HVDC cable to onshore HVDC cable, before continuing underground for approximately 1.7 km to a new converter station (below).
  - A 2 GW HVDC converter station (including a new permanent access off the A256), up to 28 m high plus external equipment such as lightning protection, safety rails for maintenance works, ventilation equipment, aerials, and similar small scale operational plant near Minster. A new substation would be located immediately adjacent.
  - Removal of approximately 2.2 km of existing HVAC overhead line, and installation of two sections of new HVAC overhead line, together totalling approximately 3.5 km, each connecting from the substation near Minster and the existing Richborough to Canterbury overhead line.

2.1.5 The Proposed Project also includes modifications to sections of existing overhead lines in Suffolk (only if Friston Substation is not built pursuant to another consent) and Kent, diversions of third-party assets, and land drainage from the construction and operational footprint. It also includes opportunities for environmental mitigation and compensation. The construction phase will involve various temporary construction activities including overhead line diversions, use of temporary towers or masts, working areas for construction equipment and machinery, site offices, parking spaces, storage, accesses, bellmouths, and haul roads, as well as watercourse crossings and the diversion of public rights of way (PROWs) and other ancillary operations.

2.1.6 A more detailed description of the proposed development is provided at **Application Document 6.2.1.4 Part 1 Introduction Chapter 4 Description of the Proposed Project**.

2.1.7 Section 35(1) of the Act provides that the Secretary of State may give a direction for development to be treated as development for which development consent is required. On 30 March 2022 the Secretary of State directed pursuant to section 35(1) and 35ZA of the Act that the proposed Project, together with any development associated with it, is to be treated as development for which development consent is required.

2.1.8 The Secretary of State noted in its direction dated 30 March 2022 that the proposed Project is of national significance, taking into account that it is a large-scale linear electricity transmission reinforcement project of approximately 130km in length and that it has a two Gigawatt capacity to transmit electricity. By progressing the proposed Development through the Planning Act 2008 development consent process, it would provide the certainty of a single, unified consenting process and fixed timescales.

2.1.9 Schedule 1 to the Order contains a list of numbered works comprising the authorised project (both the Authorised Development and Ancillary Works). In line with the approach taken in other Development Consent Orders, Schedule 1 does not specify which elements of the Project are Associated Development. National Grid considers that because it is clear that all elements of the proposals put forward are necessary for

the construction and operation of the Project, it is not material whether they are stated on the face of the Order to be Associated Development.

2.1.10 For the avoidance of doubt, National Grid considers that all elements of the authorised development are, development pursuant to the S.35 direction or are Associated Development.

# 3. Ancillary matters

3.1.1 The Order also contains powers that are ancillary to the authorised development (i.e. provisions not consisting of development) in accordance with section 120(3) of the Act.

3.1.2 The main ancillary matter is a power to acquire land or create or interfere with rights compulsorily or by agreement, in accordance with section 120(4) and Part 1, Schedule 5 of the Act. The Order also contains powers of compulsory acquisition for land required for the authorised development, or to facilitate, or that is incidental to the authorised development under section 122 of the Act. It also seeks associated powers including the acquisition of rights necessary to operate and maintain the authorised development. A justification for the powers of compulsory acquisition is set out in the Statement of Reasons which accompanies the application.

3.1.3 The Order seeks to apply and modify statutory provisions, including in relation to the compulsory acquisition of land. In such cases, sections 117 and 120(5) of the Act require that the Order be made by Statutory Instrument. The Order is, therefore, drafted in that form.

3.1.4 Other ancillary matters include the diversion and stopping up of lengths of existing highway within the vicinity of the proposed development, the temporary closure of streets, public rights of way and permissive paths, the application of speed limits, the regulation of vehicular traffic, the temporary use of land for constructing and maintaining the proposed development, the felling or lopping of trees and hedgerows, and the application and disapplication of legislation relating to the proposed development.

3.1.5 National Grid considers that these powers are required for the development to which the Order relates, or are required to facilitate or are incidental to that development.

# 4. Draft Order

## 4.1 Introduction

4.1.1 As outlined above, the draft Order is substantially based on the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024. The draft Order also draws upon the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

4.1.2 Due to the significant offshore nature of the Project, reference has also been made to the provisions in various Orders which consent marine projects, for example the East Anglia ONE North Offshore Windfarm Order 2022, the East Anglia TWO Offshore Windfarm Order 2022.

## 4.2 Authorised Project

4.2.1 The general model provisions refer to “the authorised project” which comprises of “the authorised development” and “the ancillary works”. The Order therefore includes a definition of the ‘authorised development’ and the term “ancillary works”, which together make up the “authorised project”. This is distinct from “the authorised development”.

4.2.2 The ‘authorised development’ comprises those parts of the ‘authorised project’ which are ‘development’ in the sense of Section 32 of the Planning Act 2008 and in turn therefore Section 55 of the Town and Country Planning Act 1990.

4.2.3 The ‘authorised development’ has, as is conventional in DCOs (see for example the recent National Grid made DCOs), been separated into the principal works (which have been numbered, for convenience), and the more general list of associated development which is set out after the numbered works.

4.2.4 The ‘ancillary works’ are those elements of the ‘authorised project’ which are not ‘development’ in the planning sense, as noted above. The definition of ‘ancillary works’ includes both those items listed in part 2 of Schedule 1, but also any other works authorised by this Order. This is to recognise that the draft Order contains various powers, such as remedial and protective works (Article 21) and survey powers (Article 22), which authorise various activities and hence it is important that the definitions encapsulate all that the Order would authorise, if made.

## 4.3 Deemed Approvals

4.3.1 Previous Orders (for example, the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 have included Articles which contain a provision by which the promoter must obtain consent, agreement or approval from a third party before it may do something and that such consent, agreement or approval shall not be unreasonably withheld. These precedents are relied on as they are examples of recently consented National Grid projects which consented similar linear, high-voltage electricity transmission lines and associated infrastructure.

4.3.2 Other Orders with similar provision include the National Grid (Hinkley Point C Connection Project) Order 2016, the National Grid (Richborough Connection Project) Development Consent Order 2017 and the Southampton to London Pipeline Development Consent Order 2020). They, and other made Orders, have also included a default longstop provision to the effect that, if the relevant third party fails to respond within a specified period, certain consents, agreements or approvals shall be deemed to have been given.

4.3.3 National Grid considers this approach to be necessary to remove the possibility for undue delay and to provide certainty that the authorised project can be delivered in a timely fashion. In this respect, the inclusion of deemed approvals provisions aligns with the objectives of the Act to ensure efficient delivery of Nationally Significant Infrastructure Projects. This approach is also considered to be proportionate in that, having undertaken extensive pre-application consultation and the Order having been rigorously examined, the delivery of the authorised project should not be held up unreasonably, if it has been approved by the Secretary of State.

4.3.4 The draft Order includes, therefore, at Articles 11(3) (street works); 14(5) (power to alter layout, etc. of streets); 15(9) (temporary closure of streets and public rights of way and permissive paths); 17(2) (access to works); 20(9) (discharge of water); 22(8) (authority to survey and investigate land) and 50 (9) (traffic regulation) a deemed consenting regime. This applies whereby if a consent etc. is required, and no such consent etc. is provided within 35 days of receiving an application for consent or approval, the consenting authority is deemed to have granted consent. The same 35 day period is used in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and is considered to be proportionate to each of the applications made, whilst ensuring that the delivery of the scheme is not unnecessarily delayed by means outside the control of National Grid.

4.3.5 However, the draft Order makes clear that, in each case, the deemed approvals provisions will only have effect where the application for consent, agreement and/or approval includes a clear statement that consent etc. must be provided within 35 days or else the consenting authority is deemed to have granted consent. This is intended as a safeguard to ensure that the consenting authority is placed on notice that the deemed approvals provisions will apply and is considered helpful where the consenting authority may be required to determine a number of applications concurrently.

4.3.6 In each case, the draft Order also makes clear that an alternative period of time may be agreed on a case by case basis with the relevant authority. It is anticipated that this will provide greater flexibility.

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

# Part 1 – Preliminary

## 4.4 Preamble

4.4.1 The Order, in common with all statutory instruments, is introduced by a preamble.

4.4.2 The preamble to the Order also includes the wording necessary to give effect to the conclusions reached in the Special Category Land Report which forms **Appendix C** to **Application Document 4.2 Statement of Reasons** namely that the special category land identified within the Order limits, when burdened with the rights sought to be

compulsorily acquired over it for the purposes of the project, will be no less advantageous than it was before to (1) the persons in whom it is vested, (2) other persons, if any, entitled to rights of common or other rights, and (3) to the public and, hence, special parliamentary procedure ("SPP") is not engaged

## 4.5 Article 1 (Citation and commencement)

4.5.1 Article 1 sets out the name and commencement date of the Order.

## 4.6 Article 2 (Interpretation)

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

4.6.2 A number of definitions are added, including: "the 1981 Act"; "the 2009 Act", "the 2016 Act", "Access and Rights of Way Plans"; "commence", "electric line", "electronic transmission"; "limits of deviation"; "maintain"; and "traffic".

4.6.3 Several of these additional definitions are the same as those in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024, the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and, the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017. These precedents are relied on as they are examples of recently consented National Grid projects which consented similar linear, high-voltage electricity transmission lines and associated infrastructure.

4.6.4 A detailed definition of the "environmental statement" has also been given to reflect any subsequent submissions of various environmental statement documents to the Examination. The Order extends this definition to include any environmental statement that may be submitted for the purpose of complying with and/or discharging the Requirements. This will ensure that the authorised development is constructed in accordance with any such approved submissions. The approach to this definition is adopted from the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.6.5 The definition of "maintain" reflects the definition included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024, and is substantially similar to the definition contained in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. The definition includes the ability to inspect, repair, adjust, alter, dismantle, remove, clear, refurbish, paint, surface treat, decommission, improve, reconstruct or replace any part of the authorised project but does not allow for the removal, reconstruction or replacement of the whole of the authorised project. This is to take into account the range of works that National Grid considers it may reasonably need to carry out over the lifetime of the authorised development to ensure a safe and efficient connection. The Order restricts this definition such that the ability to maintain does not vary the scheme beyond the definition of the authorised development. Reference has been included to enable National Grid to use technology, such as drones, in its maintenance activities. This is appropriate to ensure that National Grid can maintain the authorised development using the most efficient and

least disruptive methods available to it. The context in which National Grid can (or is required to) maintain is set out in the relevant article.

4.6.6 In terms of the definition of "operational use":

- The definition is precedented in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and is relied on as this precedent is the most recent consent granted for a high-voltage electricity transmission line and associated infrastructure, which included underground electric cables.
- So as to 'futureproof' the project, rating values (kV) have not been specified within Schedule 1 of the Order. This approach to drafting has been taken because positive future developments, which allow an increase in output from renewable energy sources, may necessitate higher transmission values to ensure that reaching carbon reduction targets are not inhibited by the transmission network. Future developments in technology may also allow for this increase without any material changes to infrastructure, or therefore consequent material changes to likely significant effects.
- However, it is not considered necessary to specify the transmission value in the Order as a parameter in order to control environmental effects, as these are properly controlled by all other parameters of the Order. For these reasons, the description of development at Schedule 1 of the draft Order has been drafted so as not to specify a transmission value or, therefore, inhibit the operation of a different transmission value than currently envisaged in the future.

4.6.7 The definition of "Order land" is land shown on **Application Documents 2.3 Land Plans** and described in **Application Document 4.3 Book of Reference**. The Order land is not limited to land which is to be acquired. It also includes third party land over which the undertaker is seeking to acquire rights and land of which temporary possession is required for the construction, operation and maintenance of the Proposed Project.

4.6.8 Other amendments have been made to the definitions used in the general model provisions, including the removal of "relevant planning authority" as the term is not used in the draft Order.

4.6.9 This Order includes definitions of "Deemed Marine Licence" and "MMO" as required to authorise the marine works. These are the same definitions as in the National Grid (Hinkley Point C Connection Project) Order 2016 and other orders with a deemed marine licence such as the East Anglia ONE North Offshore Windfarm Order 2022, the East Anglia TWO Offshore Windfarm Order 2022, the Sheringham Shoal and Dudgeon and Extensions Offshore Wind Farm Order 2024 and the Hornsea Project Four Offshore Wind Farm 2023.

4.6.10 The definition of "the 2016 Act" is required following the coming into force of certain provisions of the Environment Act 2021.

4.6.11 The definition of "commence" is used to clarify what material operations (being works forming part of the authorised development) must be carried out for the authorised development to have 'commenced' within the time period set by Requirement 2(1). It incorporates the definition of a "material operation" under section 155(2) of the Act, but makes clear that certain "pre-commencement operations" are excluded.

4.6.12 The carve out of "pre-commencement operations" from the definition of "commence" allows certain minor set up operations, including environmental investigations and monitoring, the diversion and laying of services, remediation in respect of any

contamination or other adverse ground conditions, and set up works associated with the establishment of construction compounds, to be carried out before the discharge of the pre-commencement requirements in Schedule 3. The works and operations within the definition of “pre-commencement operations” are either de minimis or have minimal potential for adverse impacts. Indeed, they may, in some cases, need to be carried out in order to comply with pre-commencement requirements (for example, to inform assessments and proposals required to be submitted for approval) or to implement environmental mitigation or other measures required pursuant to European Protected Species licences.

4.6.13 There is considerable precedent for the carve out of certain pre-commencement or early preparation operations including in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, as well as the East Anglia ONE North Offshore Windfarm Order 2022. These precedents are relied on as they are examples of recently granted projects which consented pre-commencement or early preparatory operations in schemes with high-voltage electricity transmission lines and associated infrastructure, or offshore cable elements.

4.6.14 Whilst noting the Planning Inspectorate's comments in Advice Note 15 regarding the use of the term "commence" within draft Orders, the ability to undertake these “pre-commencement operations” ahead of main construction is of importance in the context of the anticipated construction programme for the project. The Environmental Statement does not indicate that the excluded works and operations would be likely to have significant environmental effects. For this reason, National Grid considers that the exclusion of these works and operations from the definition is appropriate. This is considered to be a proportionate approach which allows some flexibility for pre-commencement works to be undertaken prior to approval of all construction plans and which is within the scope of the environmental impact assessment.

4.6.15 In any event, Requirement 5 (Management Plans and Commitments) clarifies that these “pre-commencement operations” must be carried out in accordance with the management plans listed in Requirement 5 (Management Plans and Commitments), the outline management plans listed in Requirement 6 (Management Plans to be approved) and the outline overarching written schemes of investigation listed in paragraph 14(1) which the undertaker will be required to comply with in carrying out the authorised project. This includes the Onshore Construction Environmental Management Plan, the Register of Environmental Actions and Commitments (“REAC”), the Outline Construction Traffic Management and Travel Plan, the Materials and Waste Management Plan, the Landscape and Ecological Management Plan (“LEMP”) and the Public Rights of Way Management Plan (“PRoWMP”). The management plans and the REAC specify the control and management measures to be adhered to during construction, and therefore will effectively control these excluded works and operations. Therefore there is effective control over these excluded works and operations.

4.6.16 A definition of “electric line” has been added, which refers to the meaning specified in section 64(1) of the Electricity Act 1989, and which provides examples of the types of apparatus which forms part of an electric line, including cables, cable ducts and offshore cables. This mirrors the definition in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024, except that offshore cables have been included given the offshore element of the Proposed Project.

4.6.17 A definition of “statutory undertaker” has been included by cross reference to the 2008 Act (being the salient primary legislation). This mirrors the definition in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.6.18 Article 2(2) clarifies that references in the Order to rights over land include the rights to do anything in, on or under the land or in the airspace above. It also clarifies that the imposition of restrictions in respect of the Order land includes restrictive covenants over the Order land. This wording is almost identical to the wording in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and is further precedented in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017.

4.6.19 Article 2(3) defines measurements as approximate, in line with the general model provisions. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order there is no issue over whether the works are permitted by the Order. This provision allows for a small tolerance with respect to any distances and points, although all works will take place within the Order limits. It is commonplace to include such a provision in an Act or instrument authorising linear infrastructure[10] and similar wording is included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024. The Order further specifies that distances for linear works are to be measured along the centre line for those works, and that pylon identification numbers are identified by reference to the centre line of those works and are subject to the limits of deviation for those works. Additionally, it is specified that the tower numbering and location of towers may adjust in accordance with the limits of deviation.

4.6.20 Articles 2(4) to (7) are not in the general model provisions. Article 2(4) provides that areas given in the Book of Reference are approximate since the Book of Reference is outside the scope of Article 2(3).

4.6.21 Articles 2(5) and 2(6) explains how references in the Order to letters or numbered points and to numbered works are to be construed.

4.6.22 Article 2(7) confirms that any reference to Documents in the Order are references to documents submitted by National Grid in support of the application for the Order. The same wording is included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.6.23 Article 2(8) clarifies that references to statutory bodies include successors to the functions as relevant to the Order.

4.6.24 Article 2(9) provides that any references to legislation include amendments to such legislation.

4.6.25 Article 2(10) clarifies that any reduction or removal or avoidance of an adverse environmental effect reported in the Environmental Statement is not to be construed as being “materially new or materially different” for the purposes of determining whether or not a material or non-material amendment is required to the Order once made. Its inclusion is intended to offer further certainty as to the proper interpretation of the “materially new or materially different” test which is used (in the definition of “maintain” (Article 2(1), as well as in Article 5(2) and Schedules 3 and 4) to constrain the exercise

[10] For example, article 2(3) of the Southampton to London Pipeline Development Consent Order 2020.

of certain powers or activities undertaken pursuant to the Order. National Grid considers it important to emphasise that the Order does not seek to prevent the future delivery of the project in a manner which is more environmentally advantageous than the reasonable worst case scenario outlined in the Environmental Statement. An equivalent provision is included in the A122 (Lower Thames Crossing) Development Consent Order 2025.

## Part 2 – Principal powers

### 4.7 Article 3 (Development consent etc. granted by the Order)

4.7.1 Article 3 grants development consent for the authorised project within the Order limits. The authorised project is described in Schedule 1. The authorised development means the development described in Part 1 of Schedule 1. Part 2 of Schedule 1 describes the ancillary works. The “ancillary works” for the project are within the meaning given in Article 1 of the general model provisions. Together, these are defined as the authorised project. The development consent is subject to the Requirements set out in Schedule 3.

4.7.2 The approach taken to Schedule 1, Part 2 and the definition of Ancillary Works is well-precedented and is drawn from Transport and Works Act Orders and the General Model Provisions, which has now been replicated in a number of made DCOs. Ancillary Works comprises those works which are known not to constitute development under s32 of the 2008 Act which are listed in Schedule 1, Part 2. However, the definition also includes the wording ‘any other works authorised by this Order’ which is included as an intentional catch-all for any other works which are authorised by a power of the Order. This seeks to ensure that there is no doubt that the powers of the Order apply to all works listed in the Order in one way or another.

4.7.3 The wording of Article 3 is similar to the wording of article 3 contained in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024, National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, the National Grid (Richborough Connection Project) Development Consent Order 2017 and the Associated British Ports (Immingham Green Energy Terminal) Order 2025

4.7.4 Paragraph (2) of Article 3 reflects section 141 of the Act which provides that an order granting development consent can include electric lines which are to be installed above ground, and provides that National Grid has authority to install and keep installed the authorised project. Article 3(2)(b) deals with the statutory power contained within s37 of the Electricity Act 1989 which enables an electric line to be installed or kept installed. This paragraph also allows National Grid to remove or replace any electric line including pylons and underground cable that requires removal as part of the authorised project.

4.7.5 The Applicant considers that the provision is well precedented in electricity infrastructure projects and notes its inclusion in the National Grid (Hinkley Point C Connection Project) Order 2016, National Grid (Richborough Connection Project) Development Consent Order 2017 and the National Grid (Bramford to Twinstead Reinforcement) Order 2024.

4.7.6 Paragraph (3) allows National Grid to operate and use the authorised project. The provision is necessary to allow the undertaker to operate and use the authorised project for the purposes for which it was designed, in accordance with the provisions of the Order and the attached Requirements.

4.7.7 Paragraph (4) of Article 3 confirms the limits of deviation within which the works described in Schedule 1 must be carried out. Further commentary on the limits of deviation is provided below in relation to Article 5.

4.7.8 Article 3(5) gives effect to Schedule 3 (Requirements) generally. Any documents or controls contained within the Requirements will therefore have effect.

## 4.8 Article 4 (Maintenance of authorised project)

4.8.1 This Article confirms that National Grid may maintain the authorised project and replicates the wording in Article 3 of the general model provisions. “Maintain” is defined in Article 2. This mirrors the wording in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.8.2 Text has been added at Article 4(2) to make it clear that the powers conferred by the Article do not negate the need for the undertaker to obtain further marine licences for offshore works not covered by the deemed marine licence included in the Order. This approach is precedented in other Orders with a deemed marine licence including the East Anglia Three Offshore Wind Farm Order 2017 and the Hornsea Three Offshore Wind Farm Order 2020.

## 4.9 Article 5 (Limits of deviation)

4.9.1 Article 5 allows for lateral and vertical deviation in respect of the linear (cables and overhead line) and non-linear (substations and converter stations) works. It sets out that the lateral limits of deviation are as indicated by the ‘Limits of Deviation’ shown on the **Application Documents 2.5 Work Plans**. Vertical limits of deviation are included in the article for the linear and non-linear works.

4.9.2 The ability to include such a power is contained in section 120(3) of the Act, which enables an Order granting development consent to make provision relating to, or to matters ancillary to, the development for which consent is granted.

4.9.3 The purpose of Article 5 is to provide the necessary flexibility when constructing the authorised project, reducing the risk that the project as approved cannot later be implemented for unforeseen engineering or geological reasons.

4.9.4 Article 5 should be read alongside the **Application Documents 2.5 Work Plans** and **Application Document 6.2.1.4 Part 1 Introduction Chapter 4 Description of the Proposed Project**. Chapter 4 explains how the limits of deviation set out in Article 5 have been applied in the context of the environmental impact assessment undertaken for the Proposed Project.

4.9.5 The limits of deviation included in Article 5 allow for:

- the vertical upwards deviation of the pylons, not exceeding 6 metres upwards. This is the same upward deviation as was consented in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. 6m relates to the standard 3m panel typically used to construct a tower. The flexibility to use either one or two panels is intended to provide a necessary but proportionate degree of flexibility in the construction of the authorised development and to reduce risk. The Applicant takes differing approaches depending on the requirements of a particular project.

- The vertical downwards deviation of the pylons to any extent as the undertaker considers necessary or convenient. This is adapted from the wording in the DCO general model provisions and is common in linear projects including the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024, National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and the National Grid (Richborough Connection Project) Development Consent Order 2017. Flexibility in downwards deviation is required so that any construction can reflect extant ground conditions when the works are carried out;
- the vertical deviation (both upwards and downwards) of the overhead conductors and fibre-optic earth wires to such extent as the undertaker considers necessary or convenient. This is necessary because the height of the conductors and fibreoptic earth wires are functions of the position and height of the pylons. This means that if, for example, a pylon height changes, or the pylons are placed closer together or further apart, the height of the conductors and fibre-optic earth wires will also change. The upwards limits of deviation will be restricted by the upwards limits of deviation for the pylons. Clearance regulations contained in the Electricity Safety, Quality and Continuity Regulations 2002 will apply to the overhead conductors and fibre-optic earth wires and, hence, will restrict the downward limits of deviation because that clearance must always be maintained; and
- the vertical upwards deviation in respect of the onshore underground electric line (excluding link pillars and chambers) is such that the minimum distance that will be kept between the top of the protective tiles or the top of the cable ducts (where there are no protective tiles) and the top of the finished ground level is 0.75 metres. Vertical downwards deviation of the underground cables is to such extent as the undertaker considers necessary or convenient. This flexibility is necessary to ensure that any localised changes in landform, geology or agricultural practices can be taken into account during construction, as well as enabling a safe distance to be maintained relative to any existing buried utility apparatus.

4.9.6 In respect of the other non-linear, permanent above ground structures, erections and apparatus, including the Kent and Suffolk substations and the Kent and Suffolk converter stations, the limits of deviation in article 5 allow for the vertical deviation upwards to the extent detailed in the table of parameters included in Article 5(3):

- in respect of the proposed substation in Suffolk, the maximum vertical limit of deviation of any buildings or structures on the site would be 16m above finished ground level of 18.5 AOD (not including roof mounted equipment such as lightning rods, handrails and roof mounted equipment and plant). Reference to ‘finished ground level’ is used in respect of this work, rather than existing ground level, to reflect the wording used in the East Anglia ONE North Offshore Windfarm Order 2022 and the East Anglia TWO Offshore Windfarm Order 2022.
- In respect of the proposed converter station in Suffolk, the vertical limit of deviation is 26m above existingground level (not including roof mounted equipment such as lightning protection and aerials). **Application Document 6.2.1.4 Part 1 Introduction Chapter 4 Description of the Proposed Project** provides further detail on the type of any equipment which may be roof-mounted.
- In respect of the proposed substation and converter station in Kent, the vertical limit of deviation is 28 m above existing ground level (not including roof mounted equipment and plant such as lightning protection and aerials). The limit of deviation for the Kent substation and converter station is taken from the existing ground level to account for works to increase the ground level.

- A vertical limit of deviation of 2.2 m is provided for link pillars.

4.9.7 References to existing ground level shall be taken as the highest existing ground level within the limit of deviation for each work as shown on the Works Plans.

4.9.8 The vertical downwards deviation of the non-linear infrastructure is to any extent as the undertaker considers necessary or convenient. National Grid is subject to a statutory duty to be economic and efficient, and that duty means that whilst National Grid requires this flexibility, it will not carry out works deeper than is economic or efficient.

4.9.9 Article 5(2) allows for the removal, clearance, decommissioning and demolition of any existing electric line to take place within the Order limits, without prejudice to the provision in Article 3(4) that the authorized project be constructed and installed in the lines and situations shown on the Works Plans.

4.9.10 Article 5(4) provides that the operational fenced compound to be constructed as part of the substation in Suffolk under Work No.1B would have a footprint no greater than 16,800m2. The operational fenced compound includes all buildings and equipment within the electrified fence but does not include the access and security airlock.

4.9.11 Article 5(5) also allows a potential extension to the limits of vertical deviation specified where the undertaker is able to demonstrate to the Secretary of State's satisfaction (and the Secretary of State has certified accordingly following consultation with the relevant planning authority) that such extension would not give rise to any materially new or materially different environmental effects to those reported in the Environmental Statement. This provision allows for unexpected ground conditions which would otherwise make it dangerous or unduly complex to install the overhead electric line works and/or the underground electric cable works and/or any other non-linear infrastructure forming part of the authorised project within the limits of vertical deviation stated. A substantially similar provision appears in other recently made Orders – see for example Article 5 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and Article 6 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. A further example includes Article 6 of the Southampton to London Pipeline Development Consent Order 2020.

4.9.12 Article 5 does not include the limits of deviation for the marine cable works as the applicable limits of deviation are specified in the deemed marine licence contained in Schedule 16 of the Order. This approach ensures that the marine works are appropriately dealt with in the deemed marine licence only. Advice Note 15 notes that the deemed marine licence will become a self-contained document and should not be reliant on definitions or cross-references to the main DCO.

## 4.10 Article 6 (Benefit of Order)

4.10.1 This Article is a departure from the general model provisions (Article 4) and overrides section 156(1) of the Act (as permitted by section 156(2)) which, if applied, would confer the benefit of the Order on anyone with an interest in the land). Statutory powers may usually only be exercised by the body on whom they are conferred.

4.10.2 It is appropriate in this case for the Order powers, subject to Article 7 (Consent to transfer benefit of Order), to be exercised only by National Grid.

4.10.3 Article 6(1) confirms this position, specifying in paragraph (1) that those provisions in the Order in respect of the authorised project are for the benefit of National Grid.

4.10.4 Paragraph (2) excepts works which are carried out for the benefit or protection of persons or land affected by the authorised project, so that it is clear that in these cases the benefit of the “planning permission” equivalent of the Order, i.e. development consent, for those mitigation works is not personal to the undertaker, but also for the users of the relevant land. The provisions of this Article are substantially similar to the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024. This precedent is included as it is the most recent consent granted for a high-voltage electricity transmission line and associated infrastructure, which included underground electric cables.

## 4.11 Article 7 (Consent to transfer benefit of Order)

4.11.1 This Article allows any or all of the benefits of the provision of the Order to be transferred, with the consent of the Secretary of State, to others. The wording of Article 7 is based on Article 5 of the general model provisions, with minor project-specific amendments, and is substantially similar to Article 7 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024. This precedent is included as it is the most recent consent granted for a high-voltage electricity transmission line and associated infrastructure, which included underground electric cables.

4.11.2 Article 7(3) ensures that any other party that exercises any benefits of rights conferred on it by any transfer or grant, is subject to the same restrictions, liabilities and obligations as would apply if those benefits and rights were exercised by National Grid.

4.11.3 Article 7(4) and (5) provide for the transfer of the deemed marine licences with the consent of the Secretary of State,. The Secretary of State must however consult the MMO before giving consent to the transfer or grant of any or all of the benefit of the provisions of the deemed marine licences

## 4.12 Article 8 (Application of the 1990 Act)

4.12.1 Article 8(1) applies to specified works which, though temporary in nature, would be in place for a considerable period of time. The Article applies section 57(2) of the Town and Country Planning Act 1990 to those works to clarify that planning permission is not required for the resumption, at the end of that period, of the purpose for which that land was normally used before the development consent was granted. A similar provision is included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, and is appropriate in this case to avoid disproportionate administrative burden on both landowners and the relevant planning authority once these temporary construction works have ceased. These precedents are relied on as they are examples of recently consented National Grid projects which consented similar linear, high-voltage electricity transmission lines and associated infrastructure, including underground cables.

4.12.2 Article 8(2) follows Article 36 of the general model provisions and provides that for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990, the development consent granted by the Order shall be treated as specific planning permission. This means that the land subject to the authorised project will be the operational land of the undertaker as a statutory undertaker and, therefore, is land on which National Grid is permitted to carry out its undertaking. Statutory undertakers can make an application for planning permission on their operational land under section 266

TCPA 1990 and that application will be dealt with by the Secretary of State and the appropriate Minister. In addition, in respect of operational land, certain permitted development rights may apply. This is appropriate and proportionate for inclusion in the draft Order as it will mean that, once constructed and into their operational phase, the works are treated as part of the wider network of which they will be part, on an equivalent legal basis. This provision is precedented in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and is also included at Article 37 of the National Grid (Hinkley Point C Connection Project) Order 2016 and Article 36 of the National Grid (Richborough Connection Project) Order 2017.

4.12.3 Additional provision has also been made at paragraph (3) to provide for planning permission in relation to powers to carry out certain street works (pursuant to Article 11(2)). This is because such matters may be outside of the Order limits, and hence the Article provides that such works are not deemed to constitute development. Article 8(2) and (3) mirror the provisions of Article 9 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and Article 8 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

## 4.13 Article 9 (Application of the Community Infrastructure Levy Regulations 2010)

4.13.1 Article 9 clarifies that, for the purposes of the Community Infrastructure Levy Regulations 2010, any buildings within the authorised project fall within the exemption under regulation 6 and will not to be considered as "development" for the purposes of the Community Infrastructure Levy (CIL).

4.13.2 The rationale for this disapplication is that the authorised project is, in its own right, a piece of Nationally Significant Infrastructure, and the undertaker will be obliged to provide all of the mitigatory infrastructure to mitigate its effects. Therefore, it would not be justifiable for CIL to be charged in respect of the development on top of this, for further infrastructure to mitigate impacts.

4.13.3 Identical wording is included in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the Southampton to London Pipeline Development Consent Order 2020.

## 4.14 Article 10 (Planning permission and other consents)

4.14.1 Insofar as National Grid needs to obtain any other planning permission for anything relating to the authorised project (i.e. to facilitate its completion, construction, use or operation), this Article seeks to avoid any question as to the interface between any such planning permission and this Order (i.e. these planning permissions will not constitute a breach of the terms of this Order). It is noted that any TCPA application would be limited to works beyond the scope of the S.35 direction, and any such application would have to go through the usual process subject to the jurisdiction and discretion of the determining local authority, and that authority would have to exercise its jurisdiction pursuant to the normal public law rules and statutory framework as set out in the 1990 TCPA. This would include imposing all appropriate controls which meet the tests for that development.

4.14.2 Substantially similar wording is included at Article 10 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 Article 8 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. These precedents are relied on as they are examples of recently consented National Grid projects which consented similar linear, high-voltage electricity transmission lines and associated infrastructure, including underground cables. This wording does not appear in the East Anglia ONE North Offshore Windfarm Order 2022 and the East Anglia TWO Offshore Windfarm Order 2022 due to the timing of the grant of these DCOs, which was before the ultimate Hillside judgment was issued.

4.14.3 Article 10(2) further confirms that any other planning permissions or development consent orders which conflict with the authorised project can proceed without the risk of enforcement action being taken notwithstanding any incompatibility between the project and the development authorised under that planning permission or development consent. In light of the Supreme Court's ruling in *Hillside Parks Ltd v Snowdonia National Park Authority 2022 UKSC [30]*, this provision is considered necessary to ensure that developments under such planning permissions are not prohibited.

4.14.4 Article 10(3) deals with the converse situation and confirms that development within the Order limits which is constructed or used under a standalone planning permission or development consent order does not prevent the carrying out of any development authorised under the Order.

4.14.5 As noted, both Articles 10(2) and 10(3) seek to address salient points arising from the Supreme Court's decision in *Hillside Parks Ltd v Snowdonia National Park Authority 2022 UKSC [30]*. This drafting is precedented in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and is considered appropriate to include here given the parallels between the projects.

4.14.6 Article 10(4) has been added at Deadline 7 of the Examination following discussion with the local host authorities. It confirms that nothing in the article prevents any enforcement action under the 1990 Act or the 2008 Act from being taken in relation to any breach of that permission or consent where that breach is not an inconsistency for the purposes of 10(2).

# Part 3 – Streets

## 4.15 Article 11 (Street works)

4.15.1 This Article confers authority on the undertaker to interfere with and execute works in or under certain streets, which are specified in Schedule 5 (*streets subject to street works*) within the Order Limits and on other streets within or outside of the Order limits for the purposes of (or for purposes ancillary to) the authorised project. This Article follows the general model provisions except in the following respects:

- Article 8(3) of the general model provisions is deleted as it is believed that the model provision may cause confusion. The intention, it is assumed, behind paragraph (3), which applies sections 54 to 106 of the 1991 Act to any street works authority, is to ensure that the relevant provisions of the 1991 Act which apply to street works apply also to other works in streets authorised by this Article. As drafted, however, the model provision causes some confusion. It seems more sensible to extend Article 12 of the Order which applies selected provisions of the 1991 Act to temporary stopping

up of streets even if no street works (within the meaning of the 1991 Act) are being carried out.

- The list of the types of works that the undertaker is authorised to carry out has been expanded from Article 8(1) of the general model provisions.
  - Article 11(1)(a) is extended to enable the breaking up or opening of any sewer, drain or tunnel within the street.
  - Article 11(1)(b) is adapted to add the carrying out of any works to strengthen or repair the carriageway.
  - Article 11(1)(c) has been included to reflect the street works powers available to National Grid in paragraph 1(b)(iii) of Schedule 4 to the Electricity Act 1989[11].
  - Article 11(1)(d) provides for apparatus and structures to be placed and kept in the street.
  - Article 11(1)(e) permits the maintenance, renewal or alteration of apparatus in or on the street or a change to its position.
  - Article 11(1)(f) includes the right to provide or improve sight lines required by the highway authority.
  - Article 11(1)(g) includes the right to provide and maintain hard or soft landscaping measures in the street.
  - Article 11(1)(h) includes the right to carry out re-lining and the placement of temporary markings.
- These additional provisions relate to the authorised development, as permitted by Sections 120(3) and (4) together with item 15 of Part 1 of Schedule 5 to the Act, namely carrying out civil engineering or other works. They are also necessary and expedient to give full effect to the power to carry out the development authorised under Article 3 of the draft Order, as permitted under section 120(5) of the Act.
- Article 11(2) has been taken from Article 11 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and is very similar to the equivalent article in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 due to the parallels between the projects which consent high-voltage electricity transmission lines, including underground cables. This provision allows the undertaker (with the consent of the street authority) to enter onto any other street (i.e. one not listed in Schedule 5 and whether or not it is in the Order limits) for the purposes of the authorised development and, in this instance, for purposes ancillary to the authorised development, to carry out the street works authorised by Article 11(1). The rationale for the inclusion of this ability to carry out street works on streets not listed in Schedule 5 and/or outside the order limits, is to cover off any instance where the undertaker, in delivering the authorised development, finds it necessary to seek to carry out additional street works which are not set out in the schedule and/or are not within the order limits. It allows flexibility for the street authority to consent to such street works within the scope of the DCO, rather than necessitating a separate standalone consent. This allows for such works to be delivered further to the same set of controls as set out within the

[11] c. 29.

DCO, given that such street works would be directly linked to the delivery of the authorised development.

- A new sub-paragraph (7) has been included to make it clear that any powers conferred by Article 11 do not limit those granted under the Electricity Act 1989. An identical provision is included in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.15.2 General model provision 8(2), as reflected in Article 11(6), provides that the authority given by paragraph (1) is a "statutory right" for the purposes of the New Roads and Street Works Act 1991[12]. The authority given by this article is a statutory right for the purposes of section 48(3) (Streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991, which means that the Order replaces the need to apply for a street works licence under that Act.

## 4.16 Article 12 (Application of the Permit Scheme)

4.16.1 This Article deals with the relationship between the Order powers and the traffic management permit scheme operated by Suffolk County Council ("the Permit Scheme"). We are not currently aware of any permit scheme in Kent.

4.16.2 Article 12(1) confirms that the Permit Scheme applies and will be used by National Grid in connection with the construction and maintenance of the authorised project, subject to the qualifications in paragraphs (2) and (3).

4.16.3 Article 12(2)(d) relates to the grant of provisional advance authorization and clarifies that a permit may not be granted for works in a location and time which one relates to (save for immediate works). It is essential that this provision is included within the Order, as without this the undertaker will not be able to forward plan works. In certain locations, albeit more generally also, controls on when works may be undertaken in the highway, including in proximity to one another, are provided for to minimise environmental impacts. The undertaker therefore must be able to forward plan by reserving road space in this manner and obtaining permits at the appropriate time in closer proximity to works being undertaken, as the Permit Scheme provides for.

4.16.4 Articles 12(3) and (4) address the approval process provided for by the Permit Scheme, which requires a permit application to begin again should proposed conditions not be agreed with. The potential consequence of this is that the undertaking of works is delayed.

4.16.5 The need to re-apply for a permit and the timescales associated with this could have the potential to delay the delivery of elements of the authorised project by significant periods, potentially years in areas where the available window for undertaking works is significantly constrained, for instance in proximity to schools. To address this significant delivery risk, Articles 12(3) and (4) provide a process for agreement to be reached on the appropriate conditions, ensuring adequate controls are provided for and the authorised project is able to be delivered in a timely manner.

4.16.6 Paragraph 8 clarifies that the procedure for appeals in Schedule 4 of the Order is capable of applying to any refusal to grant a permit, or to any decision to grant a permit

[12] c. 22.

subject to conditions, but not so as to limit any other appeal mechanism available to National Grid under the Permit Scheme or otherwise.

4.16.7 Similar wording is included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and also in the Southampton to London Pipeline Development Consent Order 2020, and also in the AQUIND Interconnector Order (noting that the latter Order is not yet made). The first precedent is relied on as it is an example of a recently consented National Grid project being a similar linear, high-voltage electricity transmission line and associated infrastructure. The Southampton to London Pipeline Development Consent Order 2020 and the AQUIND Interconnector Order are also referred to as they are examples of buried linear schemes, with underground infrastructure or cabling.

## 4.17 Article 13 (Application of 1991 Act)

4.17.1 This Article sets out how the 1991 Act will apply to the authorised development.

4.17.2 Article 13(1) clarifies that specific works such as the reconstruction, widening or substantial alteration of the highway, carried out by the undertaker on the highway, will be treated as if they are "major highway works" carried out by a highway authority for the purposes of Part 3 of the 1991 Act (street works in England and Wales). This provision ensures that the cost sharing provisions under section 85 of the 1991 Act (sharing of cost of necessary measures) apply to the Order. It is also intended to apply the co-ordination measures under section 84 of the 1991 Act (measures necessary where apparatus affected by major works) to such works whereby the undertaker and other statutory undertakers must co-operate to secure the efficient implementation of the works.

4.17.3 Article 13 (3) provides that certain provisions of the 1991 Act as listed will not apply when the undertaker is carrying out any street or highway works under the Order.

### Table 4.1: Application of 1991 Act

| Provision | Purpose |
|---|---|
| Section 56 | Allows a street authority to direct an undertaker as to the time at which street works can be carried out, in instances where the street authority believes that the works would otherwise cause serious disruption to traffic. |
| Section 56A | Enables a street authority to direct an undertaker not to use a proposed street to place its apparatus, if it appears to the street authority that this is likely to cause disruption to traffic, and there is another street in which the apparatus could be placed instead. |
| Section 58 | Provides that where a street authority intends to carry out substantial road works in a highway, the street authority may by notice restrict the execution of street works during the twelve months following the completion of the road works. |
| Section 58A | Confers a power on a street authority to impose a restriction following the carrying out by an undertaker of substantial street works. It is similar to the corresponding provision in Section 58, and is given further effect by Schedule 3A (to which see further below). |

| | |
|---|---|
| Section 73A | Provides for a 'resurfacing notice' to be given by a street authority to the undertaker specifying the resurfacing work which the undertaker is required to carry out in certain circumstances. |
| Section 73B | This provision enables the street authority to specify in a 'resurfacing notice' the times, stages and dates for beginning, executing and completing any resurfacing works. |
| Section 73C | Provides that the new road surface must conform, for a prescribed period after resurfacing, to any prescribed standards in terms of the materials and workmanship as well as any performance standards. |
| Section 78A | Requires an undertaker executing street works to contribute to the costs incurred or likely to be incurred by a street authority in reconstructing or resurfacing the street. |
| Schedule 3A | Establishes the process to be followed where a restriction is to be imposed by a street authority pursuant to Section 58A following the carrying out of substantial street works. |

4.17.4 The disapplication of the provisions listed in Article 13(3) (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order (particularly Article 3 and Schedule 1), and the specific provisions in the Order which would regulate the carrying out of the Order works.

4.17.5 Comparable provisions have been included at Article 13 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and similar provisions are also included in Article 12 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.The provisions are widely established in a wide range of other made Orders, including the Southampton to London Pipeline Development Consent Order 2020, the Silvertown Tunnel Order 2018, the Sizewell C (Nuclear Generating Station) Order 2022. The power to apply and disapply sections of the 1991 Act is provided for under section 120(5) of the Act.

4.17.6 Article 13(4) provides that further provisions of the 1991 Act as listed will not apply where the undertaker makes use of the Permit Scheme in connection with the construction and maintenance of the authorised development. The provision gives effect to Appendix B of The Suffolk County Council Permit Scheme Order 2020 (SI 2020/[●]), each of which confirms that the provisions of the 1991 Act as listed in Article 13(4) are expressly disapplied.

4.17.7 Article 13(5) departs from the general model provisions to provide that relevant provisions of the New Roads and Street Works Act 1991 shall apply to a temporary stopping up of a street under Article 15, even if no street works (within the meaning of the 1991 Act) are being carried out. This would, for example, require National Grid to make arrangements, so far as practicable, for utilities to gain access to their apparatus. Comparable provisions are commonly included in Transport and Works Act Orders, and have also appeared in Development Consent Orders with identical wording being included in the National Grid (Hinkley Point C Connection Project) Order 2016.

4.17.8 This Article avoids confusion as to whether works in respect of a temporarily stopped up street are 'street works' for the purposes of the 1991 Act and also simplifies the

implementation of those works by providing for a single process in respect of streets which are stopped up and those which are not.

## 4.18 Article 14 (Power to alter layout, etc. of streets)

4.18.1 This Article permits National Grid and anyone else with the benefit of the Order to alter, either permanently or temporarily, the layout of the streets listed in Part 1 (permanently) and Part 2 (temporarily) in Schedule 6 (Streets subject to alteration of layout) to the Order for the purpose of the authorised project.

4.18.2 Article 14(2) provides a broader power to alter the layout of any street within or without the Order limits (i.e. where the street is not listed in Schedule 6) and the layout of any street having a junction with such a street. The consent of the street authority must be obtained, such consent not to be unreasonably withheld or delayed.

4.18.3 In this Order, the rationale for this broader power, which is replicated elsewhere in the Order, comes from section 120(3) of the 2008 Act, which makes it plain that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted. This power is important to give full effect to the powers granted by the Order to construct and maintain the authorised development and to give sufficient flexibility to carry out such works with the consent of the street authority as may be required. An example, as listed in 14(2), is a street having a junction with a street, where an unexpected change in layout is required, being of one of the categories of works listed in (a)-(i). As explained further below, this power has substantial precedent in many made DCOs. The power must not be exercised without the consent of the street authority and so the exercise of the power would be controlled by the relevant street authority.

4.18.4 Article 14(3) provides that any street altered temporarily under this Article must be restored to the reasonable satisfaction of the street authority.

4.18.5 This Article is not included in the general model provisions. This type of provision has precedent in linear schemes authorised by the Transport and Works Act 1992[13] and is based on the Model Clauses for Tramways contained in Schedule 2 to the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 [14]. Similar wording has been included in other development consent order applications for linear projects, such as the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.18.6 As explained earlier, a street authority that fails to respond to an application for consent within 35 days of the application being received is deemed to have given its consent. The rationale for such deemed consent provisions is set out above in paragraphs 4.3.

4.18.7 This provision is necessary and expedient to give full effect to the power to carry out the authorised project as is provided for under section 120(5) of the Act.

## 4.19 Article 15 (Temporary closure of streets and public rights of way and permissive paths)

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

[14] S.I. 2006/1954.

4.19.1 This Article provides for the temporary closure, alteration or diversion of streets, public rights of way (PRoWs) or permissive paths shown on the access and rights of way plans or within the Order limits. In relation to those streets, PRoWs and permissive paths listed in Schedule 7, National Grid must first consult with the relevant street authority. In relation to streets and public rights of way not listed in the Schedule, the consent of the street authority (which may impose reasonable conditions) must be obtained.

4.19.2 This Article, and Schedule 7 to which it relates, departs from the general model provision in a number of ways. In particular, it has been expanded to deal also with public rights of way and permissive paths (the general model provisions only provide for the permanent stopping up of footpaths). This approach was adopted in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. These precedents are relied on as they are recently consented schemes which consented similar linear, high-voltage electricity transmission lines and associated infrastructure, which took a similar approach to temporarily closing streets and public rights of way as is proposed in this draft Order.

4.19.3 A new paragraph (2) confers a power on National Grid to use a street or public right of way, which has been temporarily closed, altered or diverted, as a temporary working site. The wording contained in the Order is identical to the wording in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and in the National Grid (Hinkley Point C Connection Project) Order 2016, save that the Order makes clear that the consent of the street authority is also required. This provision has historic precedent in orders made under the Transport and Works Act 1992[15]. It is also considered appropriate and necessary to facilitate construction of the authorised project without the undertaker needing to acquire further interests to accommodate additional construction laydown or compound areas.

4.19.4 Paragraph (4) amends Article 14(3) of the general model provisions to make it clear that National Grid, when closing streets or public rights of way, must provide temporary diversions in relation to the streets and public rights of way listed in Part 1 of Schedule 7.

4.19.5 Paragraph (6) confirms that any temporary diversion provided under paragraph (4) in respect of the streets or public rights of way closed, diverted or altered listed in Schedule 7, is not required to be of a higher standard than the temporarily closed street. This is a departure from Article 11 of the general model provisions, but is included to ensure that the undertaker is only required to provide a like-for-like replacement. The same approach was adopted in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024, the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and the Southampton to London Pipeline Development Consent Order 2020.

4.19.6 Paragraph (9) has been added (as previously explained) to impose a time limit of 35 days after which a street authority which fails to respond to an application for consent is deemed to have granted consent, so as not to delay the project unnecessarily. This provision has been used in other Development Consent Orders such as the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and the National Grid (Bramford to Twinstead Reinforcement) Development Consent

[15] See the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006/3117); the Network Rail (Nuneaton North Chord) Order 2010 (S.I 2010/1721); and the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072).

Order 2024. As the works proposed under paragraph (5)(b) are temporary in nature, and this provision will provide greater flexibility and certainty in delivering the authorised project, it is considered that this approach is justified.

4.19.7 The Article has been amended to include permissive paths due to the potential for the Proposed Project to interact with a permissive path along the old railway line that sits within the Order Limits in Suffolk (and is labelled on the Access and Public Rights of Way and Navigation Plans). The permissive path is not a PRoW. The Project does not intend to temporarily close the permissive path but it has been included as a precautionary measure to retain flexibility.

## 4.20 Article 16 (Permanent stopping up of streets and public rights of way)

4.20.1 This Article enables the permanent stopping up of any streets or public rights of way (PRoWs). Since the definition of a 'street' in section 48 of the New Roads and Street Works Act 1991 includes highways, footways and footpaths, such ways can be stopped up under this Article as well as vehicular accesses.

4.20.2 Paragraph (1) provides the undertaker with powers to stop up the streets and PRoWs as specified in columns 1 and 2 of Schedule 7 to the extent provided in the Schedule. The street or PRoW must not be wholly or partly stopped up until the new street or PRoW to be substituted for it is completed to the reasonable satisfaction of the street authority or a temporary alternative route is first provided and maintained available until the completion and opening of the new street or public right of way.

4.20.3 Paragraph (3) makes clear that where a street is stopped up under the article, all rights of way over or along the street so stopped up are extinguished.

4.20.4 Paragraph (4) provides a right to compensation for any person suffering loss due to the suspension or extinguishment of a private right of way under this article.

4.20.5 This article is based on Article 9 of the general model provisions and has been adapted according to precedented wording in the M42 Junction 6 Development Consent Order 2020 and the Sizewell C (Nuclear Generating Station) Order 2022, although the latter also dealt with change of status and extinguishment of private means of access. Although these projects consented different types of infrastructure to the Proposed Project, these precedents are helpful as they demonstrate how other projects have been granted consent to permanently close streets and public rights of way, and the wording in the draft Order therefore reflects the common approach adopted by the Secretary of State.

4.20.6 This article is subject to Article 45 (Apparatus and rights of statutory undertakers in stopped-up streets). This ensures that there are sufficient protections in place for statutory undertakers as Article 45 prescribes specific processes which the undertaker must follow in respect of the removal, relocation or substitution of statutory undertakers' apparatus within streets it is seeking to stop up and allows the streets and public rights of way identified in Schedule 7 to be stopped up (i.e. the legal right of way along them to be extinguished).

4.20.7 While noting that in this case there is cycleway which is not highway, the existing cycleway and pedestrian route through to Jutes Lane (Kent) will be retained throughout construction but a replacement local permanent diversion near the new access will be required.

## 4.21 Article 17 (Access to works)

4.21.1 This Article is based on Article 12 of the general model provisions and confers upon the undertaker powers for the purposes of the authorised project, and ancillary purposes, to provide or improve both permanent and temporary accesses at the locations specified in Schedule 8 (access to works).

4.21.2 Similar powers are conferred in relation to any other locations within the Order limits reasonably required for the authorised project so long as the relevant planning authority consents following consultation with the highway authority. The rationale for the inclusion of this ability to establish accesses elsewhere within the Order limits is to cover off any instance where the undertaker, in delivering the authorised project, finds it necessary to seek additional accesses which are not set out in the schedule. It allows flexibility for the street authority to consent to such accesses within the scope of the DCO rather than necessitating a separate standalone consent. This allows for such accesses to be delivered further to the same set of controls as set out within the DCO, given that such accesses would be directly linked to the delivery of the authorised project. The same approach was adopted in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.21.3 If the authority fails to respond to an application for consent within 35 days (as explained above), it will be deemed to have granted consent under Article 15(2). Article 15(2) mirrors the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017. The rationale for such deemed consent provisions is set out in paragraph 4.3 above.

## 4.22 Article 18 (Construction, alteration and maintenance of streets)

4.22.1 Article 18 is based on Article 10 of the TWA Model Provisions and replicates Article 17 of National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.22.2 It creates a mechanism for any street constructed or area of street altered under the Order, to be adopted for maintenance at public expense, if it is completed to the reasonable satisfaction of the local highway authority and after a set maintenance period.

4.22.3 This provision is necessary to facilitate the adoption of new street, further to the proposed alterations to streets as a result of Article 14 (Power to alter layout, etc. of streets) of the Order.

4.22.4 This provision may be included as an incidental provision to the consent for the authorised project at Article 3 of the draft Order (Development consent etc. granted by the Order) under section 120(5)(d) of the Act.

4.22.5 The Article goes further than the Model Provision in that it also seeks to deal (Article 16(3)) with the dedication of the altered street where the alterations have led to the creation of new public highway, at the end of the 12 month maintenance period.

4.22.6 Further incidental provision is made for the undertaker to have a defence against claims for loss or damage resulting from failure to maintain any street under this article if it can prove that it took all care reasonably necessary in the circumstances to ensure that the relevant part of the street was not dangerous to traffic. The Article sets out factors which a court can take into account in considering this defence. No offence is created.

4.22.7 The rationale for its inclusion is to provide a process within the Order which addresses the status of new street. However, it will always be open to the undertaker and the street authority to enter into any appropriate agreement further to Article 18 (see below).

## 4.23 Article 19 (Agreements with street authorities)

4.23.1 This Article follows Article 13 of the general model provisions on which the National Grid (Hinkley Point C Connection Project) Order 2016 was based and allows National Grid and the relevant street authority to enter into agreements about the street works necessitated by the project which would (amongst other matters) allow the local authority to carry out such works under the terms of that agreement.

4.23.2 As permitted by section 120(5)(d) of the Act, the additional provisions at paragraphs 1(e), 2(c) and 2(e), supplement the powers in paragraphs 1(a) and 2(a) and article 4 of the Order (maintenance of the authorised development), which would allow for such streets to be repaired. These additional paragraphs are included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.23.3 The power contained in this Article is separate to any agreements made under section 278 of the Highways Act 1980 (which do not relate to powers under the Order but relate to a local authority devolving its powers (under section 278 of that Act)) and this Article is, therefore necessary to permit such agreements.

# Part 4 – Supplemental powers

## 4.24 Article 20 (Discharge of water)

4.24.1 This Article sets out the circumstances in which National Grid is entitled to discharge water into a sewer or watercourse. Essentially, this can be undertaken with the consent of the owner of the sewer or watercourse. If the person whose consent is required for the discharge of water fails to respond to an application for consent within 35 days of the application being made, consent is deemed to have been given. The rationale for such deemed consent provisions is set out in paragraph 4.3 above.

4.24.2 Whilst work has been undertaken to understand the likely position, it is too early to identify the location of all discharges to private watercourses, as they will be very specific to ground conditions at the time of construction. Any owner that may potentially be affected will have been consulted on the emerging proposals for the project.

4.24.3 The Article is similar to the general model provision (Article 14), except, in particular:

- paragraph (8) is updated to reflect the repeal of section 85 of the Water Resources Act 1991[16] (which is referred to in the general model provisions) and its

[16] c. 57.

replacement by the Environmental Permitting (England and Wales) Regulations 2016;[17] and

- paragraph (9) has been added to provide that if an authority fails to respond within 35 days of an application for approval or consent under this Article it shall be deemed to have been given or granted.

4.24.4 This Article is substantially the same as the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. It is also precedented in Article 16 of the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Development Consent Order 2017, save that any owner of a public sewer or drain to which the undertaker intends to make an opening must not unreasonably withhold or delay their consent to such opening, and the undertaker is not required to maintain a watercourse, public sewer, drain or the drainage works. This responsibility will fall to the usual undertaker as is appropriate. A new definition of “main river” has been included for clarity.

## 4.25 Article 21 (Protective works)

4.25.1 This Article sets out the circumstances in which protective works can be carried out to land, buildings, structures, apparatus or equipment, within the Order limits or which may be affected by the authorised project. Except in an emergency, 14 days’ notice must be given to the owner, and the owner can seek arbitration by serving a counter-notice. The power lasts until five years after the relevant part of the project comes into operation. There is an entitlement to compensation both in relation to loss or damage caused by the undertaker in carrying out the protective works and where, within a specified period, the protective works are shown not to be sufficient.

4.25.2 The Article is based on Article 15 of the general model provisions. Similar mechanisms are found in the and National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

4.25.3 The Order extends the power to carry out protective works from just buildings to land, buildings, structures, apparatus, equipment (similar to Article 20 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024) and the authorised project, and allows the undertaker access to land within or outside of the Order limits to exercise this power (where reasonably necessary). This is necessary given the linear nature of the authorised project and also given the range of potential items that might necessitate protective works (which are defined in paragraph (12) as being both protective and remedial works), and, in particular, the inclusion of this provision will help to mitigate the risk of unforeseen circumstances prejudicing the delivery of the Project.

4.25.4 Paragraph (10) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the Article is refused. Equivalent provision is found in the

[17] S.I. 2016/1154.

National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

## 4.26 Article 22 (Authority to survey and investigate the land)

4.26.1 This Article confers the power to enter land (which includes land covered with water) within the Order limits or land which may be affected by the authorised project, for the purpose of surveying, monitoring or investigating it, including a power to make trial holes, boreholes, excavations and/or take horizontal cores (e.g. inclined boreholes for the purpose of geological fault modelling), carry out ecological or archaeological investigations or monitoring, and to use and leave apparatus (including attached to buoys) on the land for these purposes. The power of entry is subject to a requirement to give 14 days' notice to owners and occupiers of the land. Compensation is payable for any loss or damage as a result of the exercise of this power. The power to make trial holes is restricted in respect of highways or streets and requires the consent of the relevant highway or street authority, such consent being subject to the deemed approval provision which is justified above.

4.26.2 The Article is based on Article 21 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and Article 21 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. Paragraph (1)(b) includes the power to survey and investigate land or buildings to establish the effect of the authorised project or to enable the authorised project to begin. New paragraph (1)(e) allows equipment used for ecological or archaeological investigations to be left on the land (along with other apparatus used in connection with the survey, monitoring or investigation of land). These two additional powers are necessary to ensure that this Article provides authority for the types of activities that are likely to be necessary in respect of the authorised project. The powers are precedented in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

4.26.3 In addition, the power in the general model provisions is extended to include the ability to take, and process, samples of water, air, soil or rock, flora, bodily excretions, non-human dead bodies, or any non-living thing present as a result of human action found on, in or over the land. This wording reflects the wording of section 53(3A) of the Act which clarifies that the right to enter land for the purposes of surveying includes the power to take and process certain types of samples. This may be included in a DCO under section 120(4) and item 12 of Part 1 of Schedule 5 of the Act, which makes particular provision for the inclusion of powers for carrying out surveys or taking of soil samples.

4.26.4 Article 22(4) ensures that landowners are provided with details of the undertaker's purpose for surveying, monitoring or investigating the land before the undertaker enters the land, and authorises the undertaker to take necessary vehicles and equipment, including robots, helicopters, drones, gadgets or similar devices either remote controlled or autonomous, onto the land to carry out the survey, monitoring or investigations, in order to maintain flexibility for how surveys are carried out in future.

4.26.5 The provision relates to, or is ancillary to, the authorised project within the scope of section 120(3) of the Act and is a matter specifically identified in paragraph 12 of Schedule 12 of the Act, which states that a development consent order can provide for the carrying out of surveys or taking of soil samples.

## 4.27 Article 23 (Removal of human remains)

4.27.1 This article has been removed at Deadline 7.

# Part 5 – Powers of Acquisition and Possession of Land

## 4.28 Article 24 (Compulsory acquisition of land)

4.28.1 This Article authorises the compulsory acquisition of so much of the Order land listed in the Book of Reference as is required for the construction, operation or maintenance of the authorised project or is incidental to it or necessary to facilitate it.

4.28.2 This Article is based on Article 18(1) of the general model provisions. General model provision paragraphs (2) and (3) have not been included. The former would provide for the automatic extinguishment of any rights applying to the Order land as soon as it is vested in the undertaker. This is inconsistent with the general model provision on private rights of way, which provides for the extinguishment of such rights on entry onto the land, which may take place ahead of vesting of the land. Vesting may actually take place after works, which conflict with the rights in question, have been carried out. It has therefore been considered preferable to extend the “rights of way” model clause to deal with private rights in general. Hence paragraphs (2) and (3) are omitted from this Article.

4.28.3 The inclusion in Article 24 of wording authorising compulsory acquisition of such land that is required for the authorised project or is incidental to it or required for facilitate it, is based on section 122(2) of the 2008 Act, which makes plain that compulsory acquisition of land etc. must be that which is required for the development to which the development consent relates, is required to facilitate or is incidental to that development, or is replacement land.

4.28.4 Almost identical wording appears in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

## 4.29 Article 25 (Compulsory acquisition of rights)

4.29.1 This Article allows National Grid to acquire rights (and impose restrictions) over the Order land, including by creating new rights for the purpose of the authorised project.

4.29.2 Paragraph (1) provides that National Grid may acquire or create rights as described in the Book of Reference with the general nature and extent of these rights also shown in the land plans.

4.29.3 As well as providing for the acquisition of rights, the Article enables National Grid to impose restrictions (as described in the Book of Reference) over the Order land for the purposes of the authorised project. This power to impose restrictions on the use of land is considered a proportionate means of protecting the authorised project whilst minimising the extent of land to be compulsorily acquired. This power has appeared in Orders made under the Transport and Works Act 1992, particularly in contexts where it is necessary to restrict use of land or airspace above or beneath an authorised project which consists of a viaduct or tunnel. The power contained in the Order is the same as that included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and is very similar to that contained in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. The power to

impose restrictions is appropriate in the context of the authorised project to restrict use of land or airspace above or beneath the overhead electric lines or underground cables. The plots and the restrictions to be imposed are confirmed and described in the Book of Reference.

4.29.4 As per the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024, general model provision paragraph (2) has not been included as similar provision is instead included in Article 37 (Extinguishment and suspension of private rights). This approach was also taken in the National Grid (Richborough Connection Project) Development Consent Order 2017.

4.29.5 Paragraph (3) provides that where National Grid needs only to acquire rights over land or impose a restriction on that land, it shall not be obliged to acquire any greater interest in that land.

4.29.6 Paragraph (4) and Schedule 9 impose modifications to the compulsory purchase and compensation provisions under general legislation, as updated by the Housing and Planning Act 2016. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictions in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired), and is commonplace in Development Consent Orders and other compulsory purchase orders made by local authorities. For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.

4.29.7 General model provision paragraph (4) has not been included as equivalent provision has instead been made in Article 37 (Extinguishment and suspension of private rights).

4.29.8 Paragraphs (5) and (6) provide that National Grid, with the consent of the Secretary of State, may transfer to statutory undertakers its power to acquire rights or impose restrictions, where the diversion, replacement or protection of apparatus is required on Order land. The benefit of this is that it would avoid possible delay and uncertainty by statutory undertakers being required to exercise their own powers. For them to do so would be unnecessary given that the action taken would be no different than if the powers were created within this Order.

4.29.9 Paragraph (7) is identical to that in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and clarifies that the acquisition of rights over, or the imposition of restrictions which affect and interest held by, or on behalf of, the Crown are not authorised by this Article.

## 4.30 Article 26 (Acquisition of subsoil or airspace only)

4.30.1 This Article allows National Grid to acquire land lower than ground level or airspace above ground level, rather than having to acquire all of the land. The Article is similar to the general model provision (Article 24) except that it has been extended to include airspace, as well as subsoil and is similar to the powers contained in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, the National Grid (Hinkley Point C Connection Project) Order 2016 (Article 26) and the

National Grid (Richborough Connection Project) Development Consent Order 2017 (Article 26).

4.30.2 The acquisition of interests in or rights over airspace is particularly relevant in the context of overhead electricity lines, and subsoil is, of course, relevant in the context of the proposed underground element of the authorised project.

4.30.3 Article 28 of the National Grid (North London Reinforcement Project) Order 2014 and Article 30 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 contain similar provisions for airspace and subsoil respectively.

## 4.31 Article 27 (Temporary use of land for carrying out the authorised project)

4.31.1 This Article follows the principle of general model provision 28 and allows the land set out in Schedule 11 to be occupied temporarily by the undertaker in connection with the carrying out of the authorised project (Article 27(1)(a)(i)).

4.31.2 A modification to Article 28 of the general model provisions has been made to allow the undertaker also to take temporary possession of any other Order land which may be subject to compulsory acquisition of land or rights but in respect of which the undertaker has not yet served a notice of entry or made a general vesting declaration (Article 26(1)(a)(ii)).

4.31.3 The wording of this Article is very similar to that contained in National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024. It allows National Grid to occupy land to construct the authorised project without having to permanently acquire the land, or a right over the land. Once constructed, that land, or rights in the land, may be compulsorily acquired. This means that National Grid will be able to compulsorily acquire rights to retain, operate and maintain the authorised project over an area of land which matches the final footprint of the authorised project. This provides flexibility to National Grid and, for the landowner, minimises the area of land required for the compulsory acquisition of land or rights, which has a lesser impact on the landowner. There is a consequential amendment to paragraph (3) to refer to the two different categories of land mentioned in paragraphs (1)(a)(i) and (1)(a)(ii).

4.31.4 Paragraph 1(b) has extended the model provision to allow for National Grid to remove electric line, electrical plant, buildings, structures, pylons, apparatus, equipment, vegetation or any other thing from the land. Similar wording to extend the model provision is included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024, and is required to give National Grid appropriate flexibility in its temporary use of the land and is considered to be proportionate in the context of the authorised project.

4.31.5 Paragraph (1)(d) has been also been added to allow specified works to be constructed on the land listed in Schedule 11.

4.31.6 Paragraph (2) requires National Grid to give landowners 14 days' notice before entering on and taking temporary possession of land. This timeframe is considered to be necessary, appropriate and proportionate given the need for National Grid to construct the authorised project to meet the needs case.

4.31.7 Paragraph (4) provides that National Grid must provide written notice to the landowner of the date of completion of the work for which temporary possession was taken within 28 days of completion of the works.

4.31.8 Paragraph (5) provides that, unless otherwise agreed with the landowners, before giving up temporary possession of land listed in Schedule 11, National Grid must remove all temporary works and restore the land save for the exceptions listed in sub-paragraphs (a) to (j) which has been amended to allow works of mitigation and other works (such as the pylons) to be constructed and left on the land, without a requirement for these to be removed. This would apply, for example, where mitigation is provided but National Grid does not need to retain a permanent interest in the land and has precedent in National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. The provision would allow National Grid to leave, in place, foundations (more than 1.5 metres below ground) for the pylons which have been removed. This is because the removal of the foundations below 1.5 metres is judged, on balance, to be unnecessary when comparing the benefit of such removal as against the potential effects. In particular, it is considered a sufficient depth to ensure the safe future use of the land in question. Paragraph 5(j) clarifies that the undertaker is not required to replant trees in respect of land above or within 10metres of underground cables installed as part of the authorised development. This is due to the fact that the presence of an underground cable affects the development and planting that can occur above and adjacent to it, within the specified 10 m area either side of the cable. For example, trees cannot be planted above cable corridors as the roots can damage the cables or dry out the land which affects the cables. The reinstatement possible will therefore depend on the type of planting which is proposed. For example, land could be replanted to be used for crops, shrubs or hedgerows.

4.31.9 Paragraph (6) is similar to paragraph (5) but relates to land not listed in the Schedule, and provides that where temporary possession has been taken over land which may be subject to compulsory acquisition, but in respect of which National Grid has not yet served a notice of entry or made a general vesting declaration, National Grid shall either acquire the land, or right, over the land or remove the temporary works. Paragraph (6) mirrors the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024. Under these exclusions, National Grid is not required to remove any ground-strengthening works, nor to remove or reposition any apparatus belonging to statutory undertakers, nor to remove any drainage works. This is to ensure that in returning the land temporarily occupied, there is not a requirement to ‘undo’ works which have been carried out to facilitate the authorised project. For the same reasons as in paragraph (5), this provision allows National Grid to leave in place foundations (more than 1.5 metres below ground) for the pylons which have been removed. Paragraph 6(i) includes the same provision in respect of replanting of trees within 10 metres of underground cables installed as part of the authorised development.

4.31.10 Paragraph (9) amends the general model provisions to make clear that compensation payable under this Article is compensation payable for injurious affection which would normally arise under section 10 of the Compulsory Purchase Act 1965 but which, by virtue of section 125(3)(b) of the Act is payable under section 152 of the Act instead.

4.31.11 Under paragraph (10), National Grid is not required to acquire the land listed in Schedule 11 or any interests in that land, but this provision does not prevent rights in or over land, subsoil or airspace over land from being acquired. The model provision has been amended to also allow restrictions to be imposed on the Schedule 11 land and for airspace to be acquired.

4.31.12 Paragraph (12) makes clear that the power in this Article can be exercised on more than one occasion. This change is intended to clarify the intention behind the model provision rather than to expand its scope.

## 4.32 Article 28 (Temporary use of land for maintaining authorised project)

4.32.1 This Article provides for entry upon, and the taking temporary possession of, land within the Order limits (except for houses, gardens and any other building for the time being occupied) reasonably required to maintain the authorised project. At least 28 days' notice must be given (save in emergencies), and compensation must be paid for any loss or damage.

4.32.2 The Article follows the general model provisions save that paragraph (1)(c) extends the model provisions to include a right to enter on to the land for the purpose of gaining access to maintain the authorised project (which compliments the maintenance powers set out in paragraph (1)(a)). In addition, a provision removing the need for 28 days' notice in emergency situations has been added at paragraph (11), which mirrors the wording in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the River Humber Gas Pipeline Replacement Order 2016.[18]

4.32.3 Article 28(12) differentiates between a 'maintenance period' for maintaining the authorised project (five years beginning with the date that part of the authorised project is brought into operational use) and a 'maintenance period' for replacement or landscape planting (five year beginning with the date on which that part of the replacement or landscape planting is first completed).

4.32.4 This provision is necessary to ensure National Grid can access the authorised project for the purpose of maintenance, which National Grid considers to be necessary and proportionate.

## 4.33 Article 29 (Use of subsoil under or airspace over streets)

4.33.1 This Article, which closely mirrors Article 27 of the general model provisions (save for the inclusion of reference to purposes ancillary to the authorised project), provides that National Grid may use streets within the Order limits for the authorised project without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation to persons who suffer losses as a result of the exercise of this power.

4.33.2 This provision is precedented in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

# Compensation

## 4.34 Article 30 (Disregard of certain interests and improvements)

4.34.1 This Article replicates Article 29 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and Article 29 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. The article is not contained in the general model provisions.

4.34.2 It provides for disregarding certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition

[18] S.I. 2016/853.

where the creation of the interest or the making of the enhancement was not reasonably necessary and was designed with a view to obtaining compensation or increased compensation.

4.34.3 It complies with section 126 (compensation for compulsory acquisition) of the Act. This is because it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation.

4.34.4 The wording of this Article mirrors much of the wording of section 4 (assessment of compensation) of the Acquisition of Land Act 1981 (the “1981 Act”). It is necessary to specifically apply the effect of section 4 to the draft Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions (Section 1 (Application of Act)) and neither the Act nor the general model provisions apply Section 1 of the 1981 Act to the draft Order. Section 120(3) and 120(5)(a) and item 36 of Part 1 of Schedule 5 allow the application in an Order of statutory provisions which relate to the payment of compensation.

## 4.35 Article 31 (Set-off for enhancement in value of retained land)

4.35.1 This Article replicates Article 30 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and Article 30 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. The article is not contained in the DCO Model Provisions.

4.35.2 It provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Upper Tribunal shall set off against the value of the land, any increase in value of any contiguous or adjacent land belonging to that person, arising out of construction of the authorised project.

4.35.3 In assessing the compensation payable to any person in respect of the acquisition of new rights over land, the Upper Tribunal shall set off against the value of the land, any increase in the value of land over which new rights are acquired and any increase in the value of contiguous or adjacent land belonging to that person, arising as a result of the authorised project.

4.35.4 It complies with section 126(2) of the Act. This is because it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation.

4.35.5 The principle in this Article is established in section 7 of the Land Compensation Act 1961 (effect of certain actual or prospective development of adjacent land in same ownership), which needs to be applied.

4.35.6 Sections 120(3) and 5(a) and item 36 of Part 1 of Schedule 5 to the 2008 Act allows the application in an Order of statutory provisions which relate to the payment of compensation.

## 4.36 Article 32 (Compulsory acquisition of land - incorporation of the mineral code)

4.36.1 This Article is based on Article 32 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and Article 23 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

4.36.2 It incorporates both Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981 (with modifications), rather than just Part 2. Part 3 provides the procedure for the owner wishing to work the mines or minerals. By incorporating the two parts of the named Schedule, this Article exempts existing rights in minerals from the scope of compulsory acquisition and deals with the situation where the owner of mines or minerals wishes to work them. This is necessary given the nature and location of the authorised project.

4.36.3 Modifications to Parts 2 and 3 of Schedule 2 of the Acquisition of Land Act 1981, which are included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 are to substitute the words “acquiring authority” and ‘undertaking’ for “the undertaker” and “authorised project” respectively.

## 4.37 Article 33 (Time limit for exercise of authority to acquire land compulsorily)

4.37.1 This Article gives the undertaker seven years to issue ‘notices to treat’ or a ‘general vesting declaration’ to acquire the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of acquiring land is undertaken should this Order be made. The time period is longer than the general model provisions (Article 20), as for this project the intention is to construct pursuant to the temporary use powers and then exercise the powers of compulsory acquisition after construction, once the ‘as built’ drawings are available. When paired with the programme and nature of the assets, National Grid is of the view that a period of 7 years is justified. A period of 7 years is precedented in other Orders including the East Anglia ONE North Offshore Windfarm Order 2022 and the East Anglia TWO Offshore Windfarm Order 2022. **Application Document 4.2 Statement of Reasons** provides further detail on compulsory acquisition and time limits.

4.37.2 Sections 154(3) and (4) of the Act and regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 [19] allow the Order to prescribe ’other period‘ than the ‘prescribed period‘, being five years from the day on which the Order is ’made‘. This provision extends the period slightly to seven years from the day on which the Order comes into force and is, therefore, an ‘other period’ for the purposes of section 154(3)(b).

4.37.3 The time limit in this Article is to be extended (pursuant to Requirement), in the event that the Order is subject to a legal challenge.

[19] S.I. 2010/105.

## 4.38 Article 34 (Acquisition of part of certain properties)

4.38.1 This Article, which follows general model provision 26, enables acquisition of a part, rather than the whole of, properties subject to compulsory acquisition. It contains a procedure enabling the relevant owner in certain circumstances to require the whole of the land to be taken, with disputes being determined by the Land Chamber of the Upper Tribunal. The Article applies as a substitute for section 8(1) and Schedule 2A of the Compulsory Purchase Act 1965. Precedent wording appears in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

## 4.39 Article 35 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)

4.39.1 This Article provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981 ("the 1981 Vesting Declarations Act") which contains vesting procedures for land subject to compulsory purchase.

4.39.2 Article 35 allows the undertaker to choose between the notice to treat procedure or the general vesting declaration procedure set out in the 1981 Vesting Declarations Act. The latter procedure allows for title in land to pass to the acquiring authority more quickly than the former procedure. By its nature, the general vesting declaration procedure also enables several parcels of land to be acquired at the same time and is, thus, more efficient than the notice to treat procedure.

4.39.3 The Article also modifies specific provisions in the 1981 Vesting Declarations Act to ensure consistency with the provisions in the Order which relate to the exercise of compulsory purchase powers. It is important to provide clarity within the Order as to the procedures in place in respect of the authorised project. In particular, the Article clarifies at paragraph (3) that the undertaker will be a body or person authorised to acquire land for the purposes of the vesting declaration procedure.

4.39.4 The article is consistent with the approach adopted in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, and is similar to previous Orders such as the National Grid (Hinkley Point C Connection Project) Order 2016 (Article 25) although, since then, parts of the Housing and Planning Act 2016 have come into force, hence this Article has been updated accordingly.

4.39.5 The modification of the 1981 Vesting Declarations Act under Article 35 is provided for pursuant to section 120(5) of the Act which allows the Order to exclude, modify or apply any statutory provision which relates to any matter for which provision may be made in the Order (in this case, the powers of compulsory acquisition).

## 4.40 Article 36 (Application of Part 1 of the 1965 Act)

4.40.1 This Article provides for the application, with modifications, of Part 1 of the Compulsory Purchase 1965 Act.

4.40.2 The modifications are necessary to ensure that the 1965 Act is consistent with the terminology contained in the draft Order and the challenge procedures to which the draft Order is subject.

4.40.3 Article 36(3) replaces the time limit for exercising compulsory purchase powers in the 1965 Act with the powers contained in Article 33 of the draft Order.

4.40.4 Article 36(6) ensures that references to entering on and taking temporary possession of land under the Schedule 2A (as introduced by the Housing and Planning Act 2016) do not include entering on and taking temporary possession under the draft Order. This reflects the fact that Schedule 2A has two processes for the serving and determination of counter-notices depending on whether or not the acquiring authority is in possession of the land. The interpretation clause makes it clear that the undertaker will not be deemed to be in possession of the land where it is exercising its power under Articles 19, 26 or 27.

4.40.5 This provision is included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024. Similar provisions can also be found in the Sizewell C (Nuclear Generating Station) Order 2022 and the Silvertown Tunnel Order 2018.

## 4.41 Article 37 (Extinguishment and suspension of private rights)

4.41.1 This Article has expanded upon the general model provision so as to apply to private rights generally and not just to rights of way.

4.41.2 It provides for the extinguishment or suspension of private rights over land subject to compulsory acquisition and the extinguishment of private rights over land subject to the compulsory acquisition of rights (in so far as the continuance of the existing right would be inconsistent with the right acquired or a breach of a restriction as to the user of land arising by virtue of contract) from the date of the acquisition of the land or rights, or the date of entry, whichever is earliest.

4.41.3 Private rights on land already owned by National Grid within Order limits would be extinguished on the commencement of any activity authorised by the Order which interferes with or breaches such rights. This draws on the approach taken in Article 36 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 due to the parallels between the projects to consent high-voltage electricity transmission lines, including underground cables. It allows National Grid to “clear title” on land it already owns.

4.41.4 All private rights over land that is temporarily occupied by National Grid are suspended and unenforceable for the duration of the occupation (save as provided for in Article 39 below), in so far as their continuation would be inconsistent with the exercise of the powers under the Order.

4.41.5 The Article makes provision in relation to the payment of compensation. There is a saving for statutory undertakers. Private rights are defined in Article 37(9). This builds on the definition of rights given in Article 21(2) of the general model.

4.41.6 The rationale behind the inclusion of this Article is the need for National Grid to be able to construct the authorised project in a timely fashion, without interference from the exercise of any private rights which conflict with the needs of the project delivery.

## 4.42 Article 38 (Power to override easements and other rights)

4.42.1 This does not derive from the general model provisions, but is based on the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent

Order 2024. It draws on the powers in section 203 of the 2016 Act (which repealed and replaced section 237 of the Town and Country Planning Act 1990 – see section 206 and schedule 19 paragraph 9 of the 2016 Act).

4.42.2 This provision also avoids the difficulty involved in applying Article 18 (compulsory acquisition of land) of the general model provisions, in that extinguishment of rights is not automatic on acquisition and only those rights which obstruct the authorised project will be overridden. That avoids the extinguishment of rights, the continued use of which can be accommodated by the authorised project and which constitutes a potential saving in compensation.

4.42.3 Sections 120(3) and (4) and item 2 of Part 1 of Schedule 5 to the Act confirm that the Order may make such provision relating to the compulsory suspension, extinguishment or interference with interests in or rights over land.

4.42.4 Moreover, this Article is supplementary (under section 120(5)(d) of the Act) to Articles 23 (Compulsory acquisition of land) and 24 (Compulsory acquisition of rights) of the Order and is necessary and expedient to give full effect to the development consent in Article 3 of the Order (as permitted by section 120(5)(c) of the Act).

4.42.5 Paragraphs (1)(a) and (b) are based on section 203(1) of the 2016 Act, with the exception that the interests and rights referred to in the Order also include trusts, incidents and wayleaves. These additional rights are included to more closely reflect the types of interests and rights that National Grid may come across on a linear scheme of this nature.

4.42.6 The definition of “authorised activity” in paragraph (2) reflects in part the list of activities in section 203(1) of the 2016 Act (see previously section 237(1A) of the 1990 Act).

4.42.7 Paragraph (c) of Article 38(2) clarifies that “use of any land” includes the “temporary use of land”. This gives full effect to the powers under Article 27 (Temporary use of land by National Grid), and 28 (Temporary use of land for maintaining authorised project) of the draft Order, which ought to be capable of use without constraint by the interests etc, rights or restrictions described in paragraph (1) of Article 38.

4.42.8 Article 38(3) is based on the definition of “relevant right or interest” in section 205(1) of the 2016 Act (see previously section 237(2) of the 1990 Act). It mirrors the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 which closely reflects the types of rights, interest and land that National Grid may come across along the linear scheme.

4.42.9 No drafting is included to reflect section 203(9) of the 2016 Act, because it may be necessary to alter the apparatus of statutory undertakers using the powers of the Order and the relationship between the undertaker and statutory undertakers is provided for in the protective provisions included at Schedule 15 (protective provisions) to the Order.

4.42.10 Article 38(4) is included for clarity on procedure and timing for the assessment of compensation by reference to section 204(3) of the 2016 Act.

4.42.11 Article 38(5) makes provision for compensation and is based on section 204(3) of the 2016 Act (see previously section 237(4) of the 1990 Act). It confirms that if the undertaker has acquired land, and compensation is payable by a person deriving title from that undertaker but the person does not pay it, then the undertaker assumes that liability.

4.42.12 Section 204(4) of the 2016 Act defines the specified or qualifying authority against whom the liability to pay compensation can be enforced as the authority in which the

land to which the compensation relates was vested, or by which the land was acquired or appropriated. The undertaker cannot “appropriate” land in this way because it is not a local authority. Accordingly, no reference in this paragraph is made to “appropriation”, thus modifying the application of the compensation provision in section 203(3) to the extent necessary to apply it to the order, as permitted under section 125(6) of the Act.

## 4.43 Article 39 (Statutory authority to override easements and other rights)

4.43.1 For the avoidance of doubt, this Article provides that, by virtue of section 158 of the Act, in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, National Grid may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural rights of support, or breach any restriction as to user of land arising by virtue of contract.

4.43.2 It also provides that, by virtue of section 152 of the Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.

4.43.3 This is not a model provision, but is added to clarify the position with regard to rights burdening land which is required for the authorised project. Similar wording appears in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the Hinkley Point C (Nuclear Generating Station) Order 2013 (Article 25). The wording applies the Article to any trust, incident, easement, wayleave, liberty, privilege, right or advantage and includes any land forming part of a common, open space or fuel or field garden allotment, together with any restrictions as to the user of land arising by virtue of a contract. This is necessary and appropriate to address the types of interest/land that National Grid may encounter on a linear scheme of this nature.

## 4.44 Article 40 (Extinguishment of private rights and restrictive covenants relating to apparatus belonging to National Grid removed from land subject to temporary possession)

4.44.1 All private rights over land that is temporarily occupied by National Grid are suspended and unenforceable for the duration of the occupation insofar as inconsistent with the exercise of the Order powers. Rights in relation to apparatus which is removed from the land are extinguished when National Grid no longer remains in lawful possession of the land. This Article is not a model provision, but is virtually identical to the provisions in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 which both consented high-voltage electricity transmission lines, including underground cables.

4.44.2 Paragraph (3) provides that the extinguishment of any right does not give rise to a cause of action relating to any foundations, save for those which lie less than 1.5 metres underground. Whilst the intention is to remove apparatus from the land, the foundations (below 1.5 metres underground) will be left in situ and this paragraph is intended to confirm that leaving the foundations in the ground would not result in a cause of action of trespass in relation to the foundations once the right to leave the foundations in the ground is extinguished.

4.44.3 Paragraph 4 explicitly gives effect to Schedule 12 (extinguishment of private rights and restrictive covenants relating to apparatus belonging to National Grid removed from land subject to temporary possession), in line with the approach in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

## 4.45 Article 41 (Crown Rights)

4.45.1 This Article provides that the Order does not prejudice any estate, right, power, privilege, authority or exemption of the Crown and does not authorise the undertaker to take or interfere with any land or rights belonging to the Crown or a government department without written consent. Consent may be given unconditionally or subject to conditions.

4.45.2 This Article is not a model provision, but an identical provision is included at Article 40 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and is considered appropriate that this is Article be included for clarity.

## 4.46 Article 42 (Saving provisions for Trinity House)

4.46.1 This Article is a model provision for harbours that is commonly included in electricity projects with an offshore element. It is intended to provide protection to Trinity House. The provision is identical to the provisions contained in the East Anglia TWO and One North Offshore Windfarm Orders 2022 and Hornsea Project Four Offshore Wind Farm Order 2022. These precedents are relied on as examples of other projects with a significant offshore component, including offshore cables.

## 4.47 Article 43 (Special category land)

4.47.1 Article 43 requires that rights and encumbrances over any special category land (i.e. land forming part of a common, open space, or fuel or field allotment) will be discharged insofar as they would be inconsistent with the exercise of the Order rights. A similar provision is contained in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and National Grid (Richborough Connection Project) Development Consent Order 2017 at Article 31.

## 4.48 Article 44 (Statutory undertakers)

4.48.1 This Article is based on Article 31 of the general model provisions. It authorises the undertaker (1) to compulsorily acquire land belonging to statutory undertakers described in the Book of Reference, (2) to extinguish rights of statutory undertakers, as well as the removal or repositioning of apparatus belonging to statutory undertakers, and (3) acquire compulsorily new rights over land belonging to statutory undertakers described in the Book of Reference, (4) construct the authorised project in such a way as to cross underneath or over apparatus belonging to statutory undertakers within the Order Limits and (5) construct undertakers any necessary track or roadway (whether temporary or permanent) over existing apparatus belonging to statutory undertakers together with the right to maintain or remove it, and install service media under or over the existing apparatus needed in connection with the authorised project.

4.48.2 This Article is similar to the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024. Article 52 gives effect to Schedule 15 (protective provisions) separately (as explained below). This precedent is relied on due to the parallels between the projects to consent high-voltage electricity transmission lines, including underground cables.

## 4.49 Article 45 (Apparatus and rights of statutory undertakers in stopped-up streets)

4.49.1 Article 45 protects the powers and rights of any statutory undertaker whose apparatus is located under, in, on, along or across any street which is stopped up under Article 16 (Permanent stopping up of streets and public rights of way). It also provides that, upon the undertaker's reasonable request, the statutory undertaker must remove or alter the position of existing apparatus or provide other apparatus in substitution.

4.49.2 Where a statutory undertaker relocates, removes or substitutes its apparatus in response to a request from the undertaker, the undertaker must reimburse the statutory undertaker's reasonable costs of doing so (except that the undertaker is not required to reimburse the statutory undertaker where the cost of providing apparatus of a better type, larger dimensions or capacity (unless it agrees to) or where the works constitute a major highway, bridge or transport work).

4.49.3 Article 43 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) and is a matter specifically identified in paragraph 14 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the removal, disposal and re-siting of apparatus. Precedent for this Article can be found in other granted DCOs, such as in Article 43 of the Sizewell C (Nuclear Generating Station) Order 2022, Article 36 of the Hinkley Point C (Nuclear Generating Station) Order 2013, and Article 32 of the Silvertown Tunnel Order 2018. Although these projects consented different types of infrastructure to the Proposed Project, these precedents are helpful as they demonstrate how other projects dealt with the apparatus and rights of statutory undertakers in stopped up streets, and the wording in the draft Order therefore reflects the common approach adopted by the Secretary of State.

## 4.50 Article 46 (Recovery of costs of new connections)

4.50.1 This Article is identical to the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.50.2 It provides for compensation to be paid to owners or occupiers of property whose supply is affected by the removal of apparatus in accordance with Article 44 (Statutory undertakers).

# Part 6 – Miscellaneous and general

## 4.51 Article 47 (Deemed marine licence)

4.51.1 This Article provides for a marine licence (the terms of which are set out in Schedule 16 to be deemed to be granted for the works specified in that Schedule. The works constitute a ‘licensable marine activity’ for the purposes of the Marine and Coastal Access Act 2009.

4.51.2 The Article is based on Articles 37 and 38 of the general model provisions but reflects the fact that the marine licence under the 2009 Act has replaced the requirement for consent under section 34 of the Coast Protection Act 1949 and Part 2 of the Food and Environment Protection Act. Schedule 16 (deemed licence under the 2009 Act) sets out the terms of the draft licence. Other Orders with a deemed marine licence include such a provision to give effect to the deemed marine licence.

## 4.52 Article 48 (Application of landlord and tenant law)

4.52.1 This Article governs the leasing of land by National Grid to any other person. It allows the terms of the lease to override any statutory provisions relating to landlord and tenant law. The Article is identical to the general model provisions article except for some very slight linguistic modernisation. This is also identical to Article 44 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and Article 42 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 and is included for the sake of clarity and consistent application to any such leases along the route.

## 4.53 Article 49 (Defence to proceedings in respect of statutory nuisance)

4.53.1 Section 158 of the Act confers statutory authority for the purposes of a defence in statutory nuisance generally. This Article amends the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by section 158).

4.53.2 The defence is available if the noise relates to (1) the construction or maintenance of the project and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974, (2) the construction of the project and is in accordance with the controls and measures relating to noise as described in the relevant Onshore Construction Environmental Management Plan (CEMP), Construction Noise and Vibration Management Plan (NVMP), (3) is a consequence of construction or maintenance and cannot reasonably be avoided, or (4) is a consequence of complying with the Order and cannot reasonably be avoided.

4.53.3 The defence is also available if the nuisance relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and the nuisance is attributable to the use in accordance with relevant noise measures in the Register of Environmental Actions and Commitments, or if the nuisance is attributable to the use of the project and cannot reasonably be avoided.

4.53.4 This Article is based on Article 7 of the general model provisions, with the removal of references to section 65 of the Control of Pollution Act 1974, following its repeal. This provision is appropriate for inclusion in the Order to ensure that nuisance claims are considered in the context of the wider benefits of the authorised project. The article is also included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. These precedents are relied on as they are examples of recently consented National Grid projects which consented similar linear, high-voltage electricity transmission lines and associated infrastructure.

## 4.54 Article 50 (Traffic regulation)

4.54.1 This Article allows National Grid to regulate traffic on the roads and to the extent specified in Parts 1 to 7 of Schedule 13 or to any other extent that is expedient or necessary, with the consent of the traffic authority, for the construction or maintenance of the authorised project.

4.54.2 This Article has been based on the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. The article allows for the regulation of traffic for purposes ancillary to the authorised project. It is necessary to enable the construction of the authorised project to be carried out in a manner which is expedient and safe for both contractors and the public.

4.54.3 Article 50(6) reinforces the temporary nature of any traffic regulation prohibitions or restrictions permitted to be implemented pursuant to either Article 50(1) or 50(2).

4.54.4 This Article contains a provision such that consent from the traffic authority is deemed to have been given if the authority fails to notify National Grid of its decision within 35 days of receipt of the application. The rationale for the inclusion of a deemed approvals mechanism is explained at paragraph 4.3 above.

## 4.55 Article 51 (Felling or lopping)

4.55.1 This Article allows any tree, shrub, shrubbery, hedgerow or important hedgerow that is under, within, overhanging or near any part of the authorised project to be felled, lopped, pruned, cut, trimmed, coppiced, pollarded, reduced in height or width, or to have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the project or endanger anyone constructing, maintaining or operating it. This is necessary so that the authorised project can be brought forward expediently and safely and can be maintained in the same manner, noting in particular the need to ensure that minimum standard electrical safety clearances are maintained on an ongoing basis.

4.55.2 Whilst there is no precise definition of ‘near’ in the draft Order, the power in Article 51(1) is limited and may only be exercised for the specific statutory purpose(s) set out, namely to prevent an obstruction or interference with the construction, maintenance or operation of the ‘authorised development’ (as defined) or any apparatus used in connection with it, or to remove or prevent a danger to persons constructing, operating or maintaining the same. It is established wording with considerable precedent at Article 47 of the National Grid (Bramford-Twinstead Reinforcement) Order 2024, Article 81(1) of the Sizewell C (Nuclear Generating Station) Order 2022, Article 35(1) of the Norfolk Boreas Offshore Wind Farm Order 2021, and Article 32(1) of the Cleve Hill Solar Park Order 2022. None of the Orders referred to included a definition of ‘near’.

4.55.3 Compensation is payable for any loss or damage caused.

4.55.4 The Article is based on the general model provisions but the article extends the power to include coppicing, and hedgerows and important hedgerows, and deletes reference to ‘passengers’ in Article 50(1)(b) as it is not relevant to the development authorised by the Order. The wording that the undertaker ‘reasonably believes' it to be necessary is precedented wording that stems from the general model provisions and appears in other DCOs.

4.55.5 Article 51(4)-(8) extend the provision beyond the general model provision and follow the same approach as in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.55.6 Article 51(4) mirrors Article 47(4) of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and requires highway authority consent before a tree within or overhanging the public highway may be felled, lopped, pruned, cut, trimmed, coppiced, pollarded, or reduced in height or width.

4.55.7 Article 51(5) provides that the consent of the highway authority is deemed to have been given if the authority fails to notify National Grid of its decision within 35 days of receipt of the application. The rationale for the inclusion of a deemed approvals mechanism is explained at paragraph 4.3 above.

4.55.8 Article 51(8) states that consent of the relevant highway authority is not required under Article 51(4) where the tree to be felled, lopped, pruned, cut, trimmed, coppiced, pollarded, or reduced in height or width is described or shown in the Trees and Hedgerows to be Removed or Managed Plans and the undertaker has given 5 days' notice prior to carrying out such operations.

4.55.9 Articles 51(9) and (10) remove any obligation upon the undertaker to secure any consent to remove hedgerows under the Hedgerows Regulations 1997, and are based on article 47(9) and (10) of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.55.10 Article 51(11) confirms that the power in 51(1) does not apply to any trees identified as ancient or veteran trees in the Arboricultural Impact Assessment, unless it has previously been agreed with the relevant planning authority that they are unsafe and there is no alternative to their removal.

## 4.56 Article 52 (Trees subject to Tree Preservation Orders)

4.56.1 This Article allows National Grid to fell or lop trees listed in Schedule 14 (Trees subject to tree preservation order). This Article is based on the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, and similar wording is included in Article 40 of the general model provisions.

4.56.2 Paragraph (2) of this Article clarifies that if any tree preservation orders are made in the future within the Order limits, this will not prevent the felling, lopping, pruning, cutting, trimming, coppicing, pollarding, or reducing in height or width of any tree which is made subject to a tree preservation order where it is necessary to prevent obstruction or interference with the construction, maintenance or operation of the authorised project or to prevent a danger to any person carrying out those activities.

4.56.3 This Article is necessary to ensure that National Grid can comply with its obligations under the Electricity Safety, Quality and Continuity Regulations 2002.

## 4.57 Article 53 (Temporary closure of, and works in, the relevant rivers)

4.57.1 This article would enable the temporary closure of the relevant part of the River Stour in Kent and the River Fromus in Suffolk during the construction of the works. The "relevant part of the river" means so much of the rivers as are shown shaded yellow on the Access, Rights of Way and Public Rights of Navigation Plans. This provision is necessary so that works adjacent to, above and beneath, the River Stour and River Fromus (as appropriate) can be completed safely.

4.57.2 This article is not a general model provision but has precedent in other recent made orders, including the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

4.57.3 The section of the River Stour is navigable within the Order limits. The section of the River Fromus has been included on a precautionary basis.

## 4.58 Article 54 (Protection of interests)

4.58.1 This Article provides that Schedule 15 (protective provisions) has effect. The protective provisions seek to protect statutory undertakers whose assets may be affected by the authorised project.

## 4.59 Article 55 (Procedure regarding certain approvals etc.)

4.59.1 This Article contains additional provisions in respect of any approval, consent or agreement which is required to be given under the Order. It provides that any such approval, consent or agreement given by the relevant body must be given in writing and must not be unreasonably withheld or delayed.

4.59.2 It also provides that the procedures set out in Schedule 4 (discharge of requirements) apply to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Schedule 3 (requirements) and any other consents required under the Order. The Article clarifies the procedure which applies in respect of these additional consents.

4.59.3 Schedule 4 (discharge of requirements) sets out the appeal process in relation to such matters and where an appeal can be made to the Secretary of State to discharge matters including the requirements in Schedule 3 (requirements) and other consents or approvals required under the Order.

4.59.4 This Article and associated Schedule 4 (discharge of requirements) reflect the approach taken in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.59.5 This appeal process is considered proportionate and justified in light of the size and scale of the authorised project proposed to ensure the delivery of the authorised project in a timely fashion.

4.59.1 Prior to deadline 7, the Applicant submitted **Application Document 9.154 Approach to Adopting DESNZ Requirement Discharge Unit for Sea Link [AS-154]**. In light of the likely establishment of a DESNZ unit to consolidate and deliver post-consent discharge functions in consultation with Local Authority Planning Departments, the Applicant has included amendments to the draft DCO to provide a mechanism for that DESNZ unit to have jurisdiction in respect of the discharge of requirements

## 4.60 Article 56 (Safeguarding)

4.60.1 This Article is not based on a model provision and mirrors the equivalent consented provision at article 52 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024. Safeguarding provisions originated from Article 52 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and is

considered appropriate to provide protection to linear schemes where an undertaker is not acquiring the full land for the authorised development.

4.60.2 The principle of this provision is to safeguard the authorised project and other infrastructure in the construction and operational phases, from adverse effects of development in the vicinity of the authorised project and to maintain the operational integrity of the authorised project. This is especially important given the immediate and pressing national need which the project is intended to address. There is no established statutory mechanism for this which would represent a sufficient safeguard to the operational integrity of authorised project.

4.60.3 The vires for the inclusion of this provision are sections 120(3) and (5) of the Act. The safeguarding provision is a "provision relating to, or to matters ancillary to, the development for which consent is granted" by this Order (see s.120(3)); and it is also "necessary or expedient for giving full effect to" the other provisions of this Order (see s.120(5)(c)).

4.60.4 The rationale for this provision - which explains the application of the vires specified above - is that the authorisation of works by this Order would be nugatory if the safety of the works could be jeopardised by other works undertaken in close proximity. In particular, the safety of the works authorised by this Order could be at risk from as yet unknown future activities by third parties.

4.60.5 The provision does not seek to prevent the grant of a planning permission: the right conferred is a right to be consulted and for that response to be taken into account. The relevant local planning authority will then be able to consider engineering evidence as to the likely effect of any new proposed works on the safety and all other parts of the authorised project within the Order limits.

4.60.6 In order to enable local planning authorities to comply with this provision without an undue administrative burden, and in order to ensure the provision's effectiveness, paragraph (6) makes the requirement to consult a local land charge. The result is that in the ordinary course of the early stages of handling an application for planning permission the existence of this provision will become readily apparent to all concerned. (It is standard practice for Safeguarding Directions to be revealed in response to Optional Enquiries sent with requisitions for searches of the local land charges register; the approach taken in this Order takes advantage of the Order's status as a statutory provision for the purpose of section 1(1)(e) of the Local Land Charges Act 1975 (see the definition in section 14(1)).

## 4.61 Article 57 (No double recovery)

4.61.1 This Article is well established and is identical to other made DCOs including Article 53 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and Article 31 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

4.61.2 It provides that compensation is not payable both under this Order and any other enactment, contract or other rule of law. It follows the well-established principle of equivalence that a claimant is compensated for no more and no less than their loss.

## 4.62 Article 58 (Application, disapplication and modification of legislative provisions)

4.62.1 This Article is similar in effect to Article 6 of the general model provisions, which deals with the application and modification of legislative provisions and the inclusion of this provision is justified by the need to prevent conflicts in existing legislative provisions from hindering the delivery of the scheme. This provision is included in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024. A similar provision appears in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (Article 56).

4.62.2 Section 120(5)(a) of the Act provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.

4.62.3 Schedule 17 sets out those legislative provisions for which a disapplication is sought, all of which were accepted by the Secretary of State in the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

4.62.4 A disapplication is sought in respect of the temporary possession provisions of the Neighbourhood Planning Act 2017. This disapplication is considered necessary as the relevant sections of the Neighbourhood Planning Act 2017 have not been brought into force and subsidiary regulations to that Act have not yet been made. There is currently no certainty as to the requirements of the new temporary possession regime. As such, this disapplication enables the temporary possession regime created by this Order to be applied.

4.62.5 The article provides that for the purposes of regulation 6(1) of the Hedgerow Regulations 1997(a), the removal of any hedgerow to which those regulations apply is permitted if it is required for the purposes set out in article 47 (felling or lopping) of this Order.

4.62.6 Section 42 of the Local Government (Miscellaneous Provisions) Act 1976 will not apply to the extent that it would make provisions of the Order authorising the authorised development subject to other provisions.

4.62.7 A disapplication is sought in respect of Part 1 of the Building Act 1984, so that nothing in any building regulations will apply in relation to a building used, altered or demolished, or intended for use, alteration, or demolition, by the undertaker for the purposes of the authorised development before completion of construction.

4.62.8 Sections 51 (general provisions as to long-distance routes), 52 (approval of proposals relating to a long-distance route) and 55 (variation of approved proposals) of the National Parks and Access to Countryside Act 1949 shall not apply in relation to the authorised project. The King England III England Coast Path Route (in Kent) is defined as a long-distance route under the 1949 Act so this article disapplies the general provisions as to long-distance routes and the requirement for a Minister to approve any proposals made in respect of a long-distance route. The disapplication of these sections of the 1949 Act is precedented in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. That Order is cited as precedent as that project also interacted with a long-distance route under the 1949 Act.

## 4.63 Article 59 (Amendment of local legislation)

4.63.1 This Article is similar in effect to Article 6 of the general model provisions in that it seeks to exclude local legislation and byelaws listed in Schedule 18, and other legislation of local application, further to section 120(5) of the Act. There is precedent for the principle in the National Grid (Bramford to Twinstead Reinforcement) Order 2024 and the

National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 as well as in many other DCOs.

4.63.2 The intent is to identify local legislation – in particular legislation relating to infrastructure (e.g. railways), which may be inconsistent with the exercise of powers of the DCO.

4.63.3 Whilst reasonable attempts have been made to identify all legislation of local application which could affect the authorised project, it is disproportionate and impracticable to ensure that all such legislation has been identified on a linear project of this scale. Therefore, this Article is not limited in scope in only seeking to identify legislation of local application, which may prohibit the delivery of this nationally significant infrastructure project, but owing to the nature of the project and the nature of potential local legislation, it also seeks to address any unidentified local legislation. It is, therefore, considered proportionate to exclude such legislation which may serve to impede the delivery of the authorised project.

4.63.4 As a safeguard, if National Grid is notified that anything to be done under the Order would contravene a statutory provision of local application, National Grid has to respond within 14 days setting out whether it agrees that there would be a contravention and the grounds on which it believes the Article is excluded and the extent of that exclusion.

## 4.64 Article 60 (Certification of documents)

4.64.1 This Article requires National Grid to submit the final versions of the plans and documents listed in Article 60 for certification to the Secretary of State.

4.64.2 The principle of the Article is based on Article 41 of the general model provisions but it adopts the more recent approach to list out in a schedule (Schedule 19) the names of the plans and documents that are part of the application to be certified, in a similar way to the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

## 4.65 Article 61 (Service of notices)

4.65.1 This Article sets out how any notices that may be served under the Order shall be deemed to have been served properly. In particular, it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. Although the Article is not in the general model provisions it is common to have such an Article in an order authorising development such as this and the wording of this Article replicates the wording of the Article 57 of the National Grid (Bramford to Twinstead Reinforcement) Order 2024. The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act would not apply to notices served under a development consent order.

## 4.66 Article 62 (Arbitration)

4.66.1 This Article governs what happens when two parties disagree over the implementation of any provision of the Order. The matter is to be settled by arbitration, and if the parties cannot agree on whom the arbitrator should be, this is decided by the Secretary of State. The Article is based on the general model provision with the insertion of the Secretary of State as the appropriate body to reflect the agreed position in recently made Development Consent Orders, such as the National Grid (Bramford to Twinstead

Reinforcement) Development Consent Order 2024 and National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

4.66.2 Paragraph (2) confirms that matters for which the consent or approval of the Secretary of State or the Marine Management Organisation is required will not be subject to arbitration.

# 5. Schedules

## 5.1 Schedule 1 (Authorised project)

5.1.1 Schedule 1 specifies the works comprised in the authorised development for which development consent is sought and other associated development works and ancillary works. Schedule 1 should be read alongside **Application Document 2.5.1 Work Plans – Suffolk, Application Document 2.5.2 Work Plans – Kent and Application Document 2.5.3 Work Plans – Offshore, Application Document 6.2.1.4 Part 1 Introduction Chapter 4 Description of the Proposed Project** and Chapter 4 of **Application Document 7.1 Planning Statement**.

5.1.2 The principal works comprising the authorised development have been allocated individual Work Numbers and within each of those principal works, Associated Development (such as drainage works) has been included. Work Numbers 1A, 1B, 2, 3A, 3B, 4, 5 and 6 are shown on the Works Plans - Suffolk, Work Number 6 is shown on the Works Plans - Offshore and Work Numbers 6, 7, 8, 9A, 9B, 10, 11 and 12 are shown on the Works Plans - Kent. Work Numbers 13 – 17 set out the principal elements of certain works including drainage, access works, environmental mitigation, utility diversions and PRoW diversions shown on the Works Plans for Suffolk and Kent.

5.1.3 As explained in paragraph 2.1.7 above, all elements of the project are, or form part of, the works to which the Section 35 direction dated 31 March 2022 applies, or are Associated Development. In summary, it is clear that all elements of the authorised development are necessary to enable the construction and maintenance of the Sea Link Project, whether they are considered to be part of the works to which the Section 35 direction applies or are Associated Development.

5.1.4 The name 'Friston Substation' is used throughout the DCO Application solely as a geographic term to identify the site of the substation at Friston. The use of the term is not intended to establish a permanent name for this substation. The Applicant has committed to engage with the local community over a permanent name for this substation, and will continue this process in parallel to the DCO Application. In Schedule 1, the substation at Grove Wood, Friston is referred to as the Suffolk Substation.

5.1.5 The remaining sections of this paragraph 1.1.5 explain each of the Work Numbers in Schedule 1 in detail. To assist with that explanation, a schematic drawing showing the sequence of the Work Numbers relating to the principal electrical assets and the interface between them is included at Appendix A. The schematic drawing is for illustrative purposes only and has no legal effect in the context of the Order.

5.1.6 The following general points also apply to the works as set out in Schedule 1:

- All of the linear construction and/or modification works (being works forming part of Work Numbers 1A, 2, 3A, 5, 6, 7, 9A and 12) are subject to the limits of deviation in Article 5 and are shown on the Works Plans with centre lines and commencement and termination lines to aid the identification of the location of these works. The limits of deviation for underground electric lines/cables are shown on the Works Plans by a dashed pink line. The limits of deviation for overhead electric lines are shown on the Works Plans by a dashed blue line.

- The non-linear works forming part of Work Numbers 1B, 3B, 9B, 10 and 11 are subject to both the limits of deviation shown by the black dashed line on the Works Plans and the upwards vertical limits of deviation set out in Article 5. More particularly, the works to be carried out within the Suffolk Substation (being Work Number 1B), the Suffolk Converter Station (Work Number 3B), the Suffolk temporary work compounds (Work Number 4), the Kent temporary work compounds (Work Number 8), the Kent Converter Station (Work Number 9B), the works to connect the Kent Converter Station to the Kent Substation (Work Number 10) and the new Kent Substation (Work Number 11), may take place anywhere within the area delineated by a black dashed line on the Works Plans (such area being within the Order limits).
- The non-linear works forming part of Work Numbers 4 and 8 may take place anywhere within the areas shown hatched brown on the Works Plans.
- Due to the nature of the works proposed, more than one commencement and/or termination point may be shown on the Works Plans for certain Work Numbers (for example, Work Number 1A and Work Number 12).

### Work Number 1A – Suffolk Overhead Electric Line Works

5.1.7 Work Number 1A (shown on Sheets 2 and 3 of the Works Plans - Suffolk) is concerned with the removal of and modification to existing overhead electric lines and the installation of new overhead electric line which is required in order to facilitate the construction of and connection into the new Suffolk Substation.

5.1.8 The Suffolk substation already has the benefit of development consent pursuant to the East Anglia ONE North Offshore Wind Farm 2022 and the East Anglia TWO Offshore Wind Farm Order 2022 (the “SPR Orders”) but neither of the SPR Orders have been implemented. Therefore, to ensure a comprehensive consenting position, the application for development consent includes powers to construct a Suffolk substation. If the Suffolk substation is built out pursuant to the SPR Orders, which National Grid views as likely, Work Number 1A and Work Number 1B will not be built out as part of the Sea Link Project and only connection and substation works to connect (Work No. 2) the Suffolk Substation (as built out pursuant to the SPR Orders) to Work Number 3B (Suffolk converter station) will be constructed as part of the Sea Link Project.

5.1.9 On Sheet Number 3 of the Works Plans – Suffolk, there is a break in the limits of deviation of Work Number 1A (between pylon numbers 4ZW15 and 4ZW16 as referenced on the **Application Document 2.14.1 Indicative General Arrangements Plans - Suffolk** which occurs because there is no requirement to carry out works to the existing overhead electric line in the area between the eastern commencement of Work Number 1A and where Work Number 1A re-commences to the west of the commencement line.

5.1.10 Work Number 1A anticipates the installation of foundations and steel work to construct new pylons. The pylon modification works are shown coloured brown on the legend on the Works Plans and the proposed new pylons are shown coloured purple. Existing pylons which are to be removed are shown coloured green on the Works Plans.

### Work Number 1B – A new Substation at Grove Wood, Friston, Suffolk

5.1.11 Work Number 1B (shown on Sheet 2 of the Works Plans - Suffolk) is concerned with the construction of a new substation at Grove Wood, Friston, which is required to facilitate a

connection to the existing network. The Suffolk substation building would be up to 18 metres above finished ground level (not including roof mounted equipment).

5.1.12 The Suffolk substation already has the benefit of development consent pursuant to the SPR Orders but neither of these development consent orders has been implemented. Therefore, to ensure a comprehensive consenting position, the application for development consent includes powers to construct the Suffolk substation. If the Suffolk substation is built out pursuant to the East Anglia ONE North (EA1N) Offshore Wind Farm Order 2022' and 'The East Anglia TWO (EA2) Offshore Wind Farm Order 2022 ("the SPR Consents"), Work Number 1A and Work Number 1B will not be built out as part of the Authorised Development and only connection works (Work No. 2) to connect the Friston/Suffolk Substation (as built out pursuant to the SPR Orders) to Work Number 3B (Suffolk converter station) will be constructed as part of the Sea Link Project.

5.1.13 The primary position in the Environmental Statement is that the Suffolk substation will be constructed pursuant to the SPR consents. Works 1A and 1B will only come into play in a scenario where it becomes clear that SPR will not be delivering the works under their consents. There would be no scenario where the construction hours or requirements generally would not reflect the consent that the substation is actually being constructed under. **Application Document 6.2.1.4 Part 1 Introduction Chapter 4 Description of the Proposed Project** provides further details regarding the proposed substation.

### Work Number 2 – Works to connect the Suffolk Substation to the Suffolk Converter Station

5.1.14 Work Number 2 (shown on Sheets 1 and 2 of the Works Plans – Suffolk) is concerned with the installation of substation connection works including an underground electric line between Work Number 1B (or in the event that the Suffolk Substation has already been constructed pursuant to the SPR Orders, the (then) existing Suffolk Substation) and Work Number 3B.

5.1.15 Work Number 2 would involve the installation of substation connection works including foundations to support all new structures and equipment, switchgear and associated equipment, underground electric cables and fibre optic cables and associated ducts and lighting masts and columns. It would also involve the installation of the underground electrical cable, cable jointing and cable enclosures, fibre optic cables and associated chambers, link boxes and link pillars between the Suffolk substation and Work Number 3B.

### Work Number 3A – Access road to the Suffolk Converter Station

5.1.16 Work Number 3A (shown on Sheet 1 of the Works Plans - Suffolk) is concerned with the construction of a permanent access road to the Suffolk Converter Station (Work Number 3B) from the B1121, including a bridge over the River Fromus.

5.1.17 The bridge comprised in Work Number 3A will be constructed so that it includes either a 2 metre or a 4 metre clearance from the top of the bank of the river to the proposed sofit level. This corresponds to a bridge height of approximately 4 metres or 6 metres from the ground level at the abutment to the top of the parapet. The dimensions of these are referenced at paragraph 4.2.36 of **Application Document 6.2.1.4 Part 1 Introduction Chapter 4 Description of the Proposed Project**. Discussions are ongoing with the relevant stakeholders as to the height of the bridge.

### Work Number 3B – the Suffolk Converter Station and associated equipment

5.1.18 Work Number 3B (shown on Sheet 1 of the Works Plans - Suffolk) is concerned with the construction of the Suffolk Converter Station and associated equipment which is required to convert the direct current to alternating current (or the reverse).

5.1.19 Work Number 3B anticipates the establishment of a permanent fenced converter station compound near Saxmundham. The converter station buildings would be up to 26 metres high from finished ground level, excluding external equipment (such as lightning protection, safety rails for maintenance works, ventilation equipment, aerials, similar scale operational plant (which might include renewable generation equipment) or other roof treatment). Please refer to **Application Document 2.13.1 Design and Layout Plans – Suffolk** which indicates the vertical aspects.

5.1.20 Landscaping is also proposed, including planting and bunding, in order to screen the buildings.

### Work Number 4 – Suffolk temporary work compounds

5.1.21 Work Number 4 (shown on Sheets 1, 2, 3, 4, 5 and 6 of the Works Plans - Suffolk) is concerned with the establishment of temporary work compounds required in connection with the construction of the Sea Link Project in Suffolk.

5.1.22 In Suffolk, work compounds are proposed adjacent to the B1121 for the construction of the bellmouth for the access road to the Suffolk Converter Station (Work No.3A), for the Suffolk Converter Station (Work Number 3B), the Friston/Suffolk substation (Work Number 1B), along the HVDC electric cable route (Work Number 5) and at the landfall site (Work Number 5). The locations of these are referenced at paragraph 4.6.9 of **Application Document 6.2.1.4 Part 1 Introduction Chapter 4 Description of the Proposed Project**. In relation to the Suffolk Converter Station work compounds, only compound number S02, compound number S03 or compound numbers S04 and S05 would be required for the construction of the Suffolk Converter Station. The optionality is included to provide flexibility for National Grid Ventures to locate its own converter station and construction compound within this area if it delivers either the Lion Link and/or Nautilus projects at the Saxmundham Converter Station site. This is referenced at paragraph 4.6.112 of **Application Document 6.2.1.4 Part 1 Introduction Chapter 4 Description of the Proposed Project** and in **Application Document 7.10 Coordination Document**.

5.1.23 These temporary work compounds would include site offices, storage areas, parking (including electric vehicles charging points if appropriate) and welfare facilities.

### Work Number 5 – an underground electric line connection in Suffolk

5.1.24 Work Number 5 (shown on Sheets 1, 2, 3, 4, 5 and 6 of the Works Plans - Suffolk) is concerned with the laying and installation of an underground HVDC electric line to connect the Suffolk Converter Station to a transition joint bay at a landfall point where the cable transitions from onshore to offshore technology.

5.1.25 Work Number 5 would involve the installation of the underground electrical cable, cable jointing and cable enclosures, fibre optic cables and associated chambers, link boxes and trenchless crossings.

### Work Number 6 – marine electric cable works

5.1.26 Work Number 6 (shown on Sheet 6 of the Works Plans - Suffolk, Sheets 1, 2 and 3 of the Offshore Works Plans and Sheets 3, 4 and 5 of the Works Plans - Kent) is concerned with the laying and burying of a marine HVDC electric line between the transition joint bay in Suffolk (comprised in Work Number 5) and the transition joint bay in Kent (comprised in Work Number 7). The works comprised in Work Number 6 are located both landward of mean low water springs in the Suffolk and Kent landfalls and seaward of mean high water springs.

5.1.27 Work Number 6 would involve the laying of the marine electric cable and fibre optic cables, trenchless entry/exit pits in both the Suffolk and Kent landfalls, marine cable protection works and temporary work areas for vessels to carry out intrusive and non-intrusive activities

### Work Number 7 – an underground electric line connection in Kent

5.1.28 Work Number 7 (shown on Sheets 2 and 3 of the Works Plans - Kent) is concerned with the laying and installation of an underground HVDC cable line to connect the transition joint bay at a landfall point where the cable transitions from offshore to onshore technology to the Kent Converter Station (Work number 9B).

5.1.29 Work Number 7 would involve the installation of the underground electrical cable, cable jointing and cable enclosures, fibre optic cables and associated chambers and link boxes.

### Work Number 8 – Kent temporary work compounds

5.1.30 Work Number 8 (shown on Sheets 2, 3 and 4 of the Works Plans - Kent) is concerned with the establishment of temporary work compounds required in connection with the construction of the Sea Link Project in Kent.

5.1.31 In Kent, work compounds are proposed adjacent to the A256 for the construction of the bellmouth for the access road to the Kent Converter Station (Work Number 9A), for the combined Kent Converter Station (Work Number 9B) and Kent Substation Site (Work Number 11), along the HVDC cable route (Work Number 7) and at the landfall site (Work Number 7). The locations of these are referenced at paragraph 4.6.10 of **Application Document 6.2.1.4 Part 1 Introduction Chapter 4 Description of the Proposed Project**.

5.1.32 These temporary work compounds would include site offices, storage areas, parking (including electric vehicles charging points if appropriate) and welfare facilities.

### Work Number 9A – Access road to the Kent Converter Station and Kent Substation

5.1.33 Work Number 9A (shown on Sheet 2 of the Works Plans - Kent) is concerned with the construction of a permanent access road to the Kent Converter Station from the A256, north of Jutes Lane, including bridges and culverts.

### Work Number 9B – the Kent Converter Station and associated equipment

5.1.34 Work Number 9B (shown on Sheet 2 of the Works Plans - Kent) is concerned with the construction of the Kent Converter Station and associated equipment which is required to convert the direct current to alternating current (or the reverse). Work Numbers 9B, 10 and 11 will be located in close proximity to each other and will all be constructed within the limits of deviation shown on the Works Plans for these Work Numbers.

5.1.35 Work Number 9B anticipates the establishment of a permanent fenced converter station compound near Minster. The converter station and substation buildings would be up to 28 metres high above existing ground level, excluding external equipment (such as lightning protection, safety rails for maintenance works, ventilation equipment, aerials, similar scale operational plant (which might include renewable generation equipment) or other roof treatment. Please refer to **Application Document 2.13.2 Design and Layout Plans – Kent** which indicates the vertical aspects.

5.1.36 Landscaping is also proposed, including planting and bunding, in order to screen the buildings.

### Work Number 10 – works to connect the Kent Converter Station to the Kent Substation

5.1.37 Work Number 10 (shown on Sheet 2 of the Works Plans - Kent) is concerned with an electrical connection between the Kent Converter Station (Work Number 9B) and the Kent Substation (Work Number 11).

5.1.38 Work Number 10 may include either a combination of gas insulated busbars and busbars or a gas insulated busbar connection and fibre optic cables, ducts and chambers.

### Work Number 11 – the new Kent Substation

5.1.39 Work Number 11 (shown on Sheet 2 of the Works Plans - Kent) is concerned with the construction of the Kent Substation which is required to facilitate a connection to the existing network and associated equipment.

5.1.40 Work Number 11 anticipates the establishment of a permanent fenced substation compound near Minster. The converter station and substation buildings would be up to 28 metres high above existing ground level, excluding external equipment (such as lightning protection, safety rails for maintenance works, ventilation equipment, aerials, similar scale operational plant or other roof treatment. Please refer to **Application Document 2.13.2 Design and Layout Plans – Kent** which indicates the vertical aspects.

5.1.41 Landscaping is also proposed, including planting, in order to screen the building.

### Work Number 12 – Kent overhead Electric Line Works

5.1.42 Work Number 12 (shown on Sheets 1 and 2 of the Works Plans - Kent) is concerned with the removal of and modification to existing overhead electric lines and the construction and installation of new overhead electric line from the new Kent Substation (Work Number 11) to the existing Richborough to Canterbury overhead electric line.

5.1.43 Work Number 12 anticipates the installation of foundations and steel work to construct new pylons, the installation of overhead electric line between Work No. 11 and the existing Richborough to Canterbury overhead electric line, installation of conductors, downleads and downdroppers, insulators and fittings to facilitate connection to the existing Richborough to Canterbury overhead electric line and the installation of fibre optic earthwire conductors, with optical fibres terminated in joint boxes. Temporary towers would be utilised during the construction phase, as described in **Application Document 6.2.1.4 Part 1 Introduction Chapter 4 Description of the Proposed Project.**

5.1.44 The pylon modification works are shown coloured brown on the legend on the Works Plans and the proposed new pylons are shown coloured purple. Existing pylons which are to be removed are shown coloured green on the Works Plans.

### Work Number 13 – Principal Drainage Works

5.1.45 Work Number 13 shows the principal drainage works within the Order Limits.

### Work Number 14 – Principal Accesses

5.1.46 Work Number 14 shows the principal accesses within the Order Limits and associated works to facilitate access, including structural repairs and the installation of structures or apparatus associated with the access.

### Work Number 15 – Principal Environmental Mitigation and Landscaping

5.1.47 Work Number 15 shows the principal environmental mitigation and landscaping within the Order Limits. This includes mitigation works identified in the Environmental Statement and/or the management plans set out in Requirement 6, including ecological mitigation and enhancement and landscaping mitigation and enhancement.

### Work Number 16 – Principal Utility Diversions

5.1.48 Work Number 14 shows the principal utility diversions within the Order Limits.

### Work Number 17 – Principal Public Right of Way Diversions

5.1.49 Work Number 17 shows the principal rights of way diversions within the Order Limits.

## 5.2 Schedule 2 (Plans)

5.2.1 Schedule 2 lists the works plans, land plans, access and rights of way plans and other plans submitted with the application and referred to in the Order.

## 5.3 Schedule 3 (Requirements)

5.3.1 Schedule 3 contains draft requirements corresponding to conditions which, under section 120(2) of the Act, could have been imposed on the grant of planning permission for the authorised development had it not fallen within the ambit of the Act. The requirements have a similar purpose to planning conditions.

5.3.2 The draft requirements closely relate to the mitigation set out in the Environmental Statement and ensure that the mitigation relied upon as part of the Environmental Impact Assessment is secured.

5.3.3 Certain of the draft requirements (for example, Requirement 4) include what is commonly referred to as a ‘tailpiece’, being “a mechanism inserted into a condition (or by analogy a Requirement) providing for its own variation.” Whilst noting the Planning Inspectorate’s comments in Advice Note 15 regarding the acceptability of including ‘tailpiece’ wording within draft requirements, National Grid considers that the careful use of such a mechanism in Schedule 3 of the draft Order allows for a proportionate and acceptable level of flexibility in the delivery of the project. A degree of flexibility in implementation is both appropriate and necessary when delivering complex nationally

significant infrastructure, and even more so given the pressing need to deliver this particular project.

5.3.4 In any event, National Grid notes the inclusion in sub-paragraph 4 of Requirement 1 (Interpretation) of a safeguard mechanism through which the necessary further approval or agreement in such circumstances may only be given in relation to minor or immaterial changes and where it has been demonstrated to the satisfaction of the discharging authority that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different significant environmental effects to those assessed in the Environmental Statement.

5.3.5 **DCO Requirement 1**: (Interpretation) provides for the interpretation of words and phrases used in this Schedule. Paragraph (2) is very similar to model requirement 36 (Requirement for written approval).

5.3.6 In particular, a definition of "discharging authority" is included and means the body responsible for giving any consent, agreement or approval required by a requirement included in this Order, or further to any document referred to in any requirement, or the local authority in the exercise of functions set out in sections 60 or 61 of the Control of Pollution Act 1974. Article 2 of the draft Order also includes the definition of "relevant planning authority" which means, in any given provision of this Order, the local planning authority for the area to which the provision relates. The definitions of 'discharging authority' and 'relevant planning authority' are deliberately drafted to not name specific authorities or bodies given the different geographies and authorities involved in the Proposed Project. Such an approach is well-precedented by other development consent orders and specific bodies are generally not named in the draft Order. However, the Applicant recognises that certainty is required by all parties over which bodies are defined as a discharging authority. A table setting out the discharging authorities and consultees for the management plans listed in Requirement 6 is appended to this Explanatory Memorandum.

5.3.7 A definition of the wording 'substantially in accordance with' is also included to provide clarity as to how the wording 'substantially in accordance' would operate. Where any requirement provides that the authorised development or any part of it is to be carried out 'substantially in accordance' with details, or a scheme, plan or other document, this means that the undertaker will carry out such work(s) in a way that is substantially consistent with the information set out in those details, schemes, plans or other document orany subsequent version of the details, scheme, plan or document approved under a requirement and (where the purpose is to mitigate effects identified in the Environmental Statement) in a way that achieves their required mitigatory purpose.

5.3.8 **DCO Requirement 2**: (Time Limits) accords with the model requirement in providing that the authorised development must be commenced within 5 years of the date of the Order.

5.3.9 **DCO Requirement 3**: (Detailed Design) provides that the construction of the buildings included in Work Nos 3B,9B and 11 (Suffolk and Kent converter station works and the Kent substation) may not commence until the details of the design, scale and external appearance of the building has been submitted to and approved by the relevant planning authority. Design details for Works No.9B and 11 may only be approved following consultation with Historic England and Dover District Council.

5.3.10 The authorised development must then be carried out in accordance with the details submitted to the relevant planning authority. The construction of the buildings does not

include the construction of the platform or other elements that are not above finished ground level in the locations of the buildings.

5.3.11 When discharging this requirement, the relevant planning authority must take into account that the undertaker must meet the Critical Design Constraints. The aspects where more flexibility may be available include the external colour, surface profile and finish of cladding and the roofline of the permanent buildings, although aspects of these elements will be fixed through technical requirements.

5.3.12 In submitting the details, a statement must be included which confirms that the detailed design has been reviewed by an independent design review panel and describing the actions taken by the undertaker in response to comments received.

5.3.13 The requirement sets out details for the design of Friston substation to commit to the same principles on cladding colour, roof cladding, door colour and perimeter security fencing as proposed in the documents submitted by Scottish Power Renewables to discharge Requirement 12 on the East Anglia TWO consent. The drafting retains flexibility to enable the Applicant to change these details with the approval of the relevant planning authority should there be any change to the SPR requirement before it is discharged; or changes through any re-discharge process that SPR may undertake.

5.3.14 Details of the design, layout, scale and external appearance of the bridge crossing over the River Fromus (part of Work No. 3A) must be submitted to and approved by the relevant planning authority prior to commencement of development of the bridge crossing, following consultation with the Environment Agency and Suffolk County Council. The requirement also includes details on the design of the River Fromus bridge which has been discussed with the Environment Agency to secure a minimum soffit height, carry out monitoring works should the bridge have a soffit height of under 6m and commit to provision of a contingency fund should monitoring demonstrate that further compensation or enhancement is necessary.

5.3.15 The requirement also provides for the submission and approval of an Operational Lighting Management Plan. The lighting at the Works specified shall be installed and operated in accordance with the approved Operational Lighting Management Plan.

**5.3.16** **DCO Requirement 4**: (Stages of authorised development) requires that a written notice setting out the anticipated programme for the carrying out of pre-commencement operations must be given to the relevant planning authority no less than 28 days prior to the date on which those pre- commencement operations are first carried out. It also provides for a written scheme setting out all stages of the authorised development to be submitted to the relevant planning authority before development can commence, and for notice of the commencement and completion of each stage to be given to the relevant planning authority.

**5.3.17** **DCO Requirement 5**: (Management Plans and Commitments) requires all works forming part of the authorised development to be carried out in accordance with the management plans listed in sub-paragraph (1). These include the Greenhouse Gas Reduction Strategy, Red Throated Diver Protocol and Section 1 of the Register of Environmental Actions and Commitments.

**5.3.18** Sub-paragraph (3) further provides that the “pre-commencement operations” (as defined in Article 2(1) of the Order) must be carried out in accordance with each of the Management Plans listed, again unless otherwise agreed with the relevant planning authority or other discharging authority. The flexibility to deviate from the certified Management Plans is both necessary and proportionate to accommodate any required change following certification..

5.3.19 **DCO Requirement 6**: (Management Plans to be approved) provides for the submission to, and approval by, the relevant planning authority of appropriate plans, schemes and strategies listed in the requirement with the works to be carried out in accordance with those approved plans, schemes and strategies, in consultation with the relevant district or county council, the Environment Agency in the case of the Onshore Construction Environmental Management Plan, Construction Noise and Vibration Management Plans and the Material and Waste Management Plan, and in consultation with Natural England in the case of the Landscape and Ecological Management Plans and Drainage Management Plans. Sub-paragraph (3) of Requirement 5 also captures these outline management plans and provides that the "pre-commencement operations" (as defined in Article 2(1) of the Order) must be carried out in accordance with each of the Management Plans listed in this requirement, again unless otherwise agreed with the relevant planning authority or other discharging authority.

5.3.20 Requirement 6(3) requires all landscaping works to be carried out and maintained in accordance with the approved Landscape and Ecological Management Plans and in accordance with the relevant recommendations of British Standards.

5.3.21 The Applicant has incorporated wording similar to that contained in Requirement 15 of the East Anglia TWO Offshore Windfarm Order 2022 into its requirement 6(4) which deals with the replanting of trees and shrubs within a five year period from planting where such landscaping is removed, dies or in the opinion of the relevant planning authority is seriously damaged or diseased.

5.3.22 **DCO Requirement 7**: (Construction Hours) confirms the hours during which onshore construction work may be carried out. For the avoidance of doubt, Requirement 7 applies to the "pre-commencement operations" (as the term is defined in Article 2(1) of the Order).

5.3.23 Core construction hours are included at sub-paragraph (1), whilst sub-paragraph (4) lists a number of activities which are not subject to the core working hours. In particular, subparagraph (4)(g) allows for the completion outside of core working hours of works delayed or held up by severe weather conditions which disrupted or interrupted normal construction activities. Although clearly necessary to be considered relative to the particular construction activity or activities being undertaken, 'severe weather conditions' may include, for example, periods of high wind, heavy rainfall or snowfall, flooding, fog, very cold or very hot temperatures, and/or unstable atmospheric conditions (including lightning risk).

5.3.24 There will be no working on Bank Holidays in respect of Work No. 3B, Work No.9B, and Work No. 11, except for the operations described in paragraph (4) below or with the prior agreement of the local planning authority. In respect of those works, for Bank Holiday Mondays (meaning Easter Monday, the early May bank holiday, the Spring bank holiday, and the summer bank holiday) there will also be no working on the preceding Saturday or Sunday in each case.

5.3.25 Start-up and close down activities (as defined in DCO Requirement 1) are also not intended to be subject to the core working hours. Indeed, flexibility to undertake start-up and close down activities outside of the core construction hours is both necessary and proportionate for the main works to progress on time, to programme and within defined hours (including to take account of periods of transmission network outages). A 50dBA noise limit (LOAEL) will apply at the nearest noise-sensitive receptor in respect of start-up and close down activities.

5.3.26 Sub-paragraph (2) provides that percussive piling works are limited to between 0700 to 1900 Monday to Friday and 0700 to 1700 on Saturdays, and may not occur on Sundays or Bank Holidays, unless otherwise approved by the relevant planning authority.

5.3.27 Sub-paragraph (3) limits HGV deliveries to between 0700 to 1900 Monday to Friday and 0700 to 1700 on Saturdays and may not occur on Sundays or Bank Holidays, unless otherwise approved by the relevant highway authority. Sub-paragraph (3) is subject to the activities which are not subject to the core working hours set out in sub-paragraph (4).

5.3.28 Sub-paragraphs (7)-(9) confirm that the construction working hours mirror the construction working hours consented in the East Anglia ONE North Offshore Windfarm Order 2022 and the East Anglia TWO Offshore Windfarm Order 2022 in respect of Work No.1A and Work No. 1B.

5.3.29 **DCO Requirement 8**: (Retention and protection of existing trees and hedgerows) sets out the measures for retaining and protecting existing trees and hedgerows.

5.3.30 **DCO Requirement 9**: (Reinstatement schemes) provides for the reinstatement of land which is used temporarily for construction. This is subject to Article 27 (Temporary use of land).

5.3.31 **DCO Requirement 10**: (Unsuspected Contamination) provides that where contaminated land is identified when carrying out the authorised development including any pre-commencement operations, which was not previously identified in the environmental statement, then no further development shall be carried out within the identifiable perimeters of the area in which the suspected contamination is located. Where remediation of the land is required, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be submitted to and approved in writing by the relevant planning authority, following consultation with the Environment Agency.

5.3.32 **DCO Requirement 11**: (Removal of temporary bridges or culverts) provides that any temporary bridge or culvert required in connection with a part of the authorised development must be removed within eighteen months of that part of the authorised development being first brought into operational use, or such further time as may be approved by the relevant planning authority.

5.3.33 **DCO Requirement 12**: (Highway works) provides that no work to construct or alter any new or existing means of access to a highway shall commence until written details have been submitted and approved by the relevant planning authority.

5.3.34 **DCO Requirement 13**: (Decommissioning) provides for the decommissioning of the authorised development, with details to be approved by the relevant planning authority, in consultation with the Environment Agency, at least six months prior to the commencement of any decommissioning works.

5.3.35 **DCO Requirement 14**: (Archaeology) includes an overarching requirement that the authorised development must be undertaken in accordance with the Outline Written Scheme of Investigation for Kent and Suffolk as appropriate. However, no stage of the authorised development, including any pre-commencement operations that involve intrusive groundworks which for the avoidance of doubt, includes any vegetation removal where this removal includes intrusive groundworks, is permitted to commence until either a preservation in situ Historic Environment Management Plan or a site-specific written scheme of investigation (which accords with the relevant Overarching Written Scheme of Investigation and is informed by the pre-commencement archaeological surveys) has

been submitted to and approved by the relevant planning authority, in consultation with Historic England.

5.3.36 **DCO Requirement 15: (Restriction on carrying out works where consented in another order)** prevents any part of Work No.1B which has been completed pursuant to another development consent order from being constructed pursuant to the draft DCO, save where amendments to those works are required for the purposes of the Authorised Project.

5.3.37 **DCO Requirement 16: (Trenchless Landfall Techniques)** replicates the condition within the deemed marine licence at Schedule 16 to the Order to reflect National Grid's commitments to using trenchless landfall techniques between the onshore transition joint bay and the exit pits.

5.3.38 **DCO Requirement 17: (Depth Protection)** secures the depths that must be safeguarded in the Areas of Interest to reflect discussions with the Port of London Authority, London Gateway Port and the MCA. The Areas of Interest are defined as being those areas, or any part thereof, shown on the Areas of Safeguarded Depth Plan which comprises three areas labelled: Sunk Pilot Boarding area, Long Sand Head Two-Way Route crossing area, and North East Spit area and any reference to any individual one of those areas means the area as shown on the Areas of Safeguarded Depth Plan. The requirement specifies that, subject to paragraph 2 of the requirement, any part of Work No.6 located within the Areas of Interest must be designed, installed, operated and maintained at a level which would not preclude or impede the dredging of parts of the Areas of Interests to the following depths:

a) "Sunk Pilot Boarding Area" to a level of 22 metres below Chart Datum;

b) "Long Sand Head Two-Way Route Crossing" to a level of 12.5 metres below Chart Datum;

c) "North East Spit Area" to a level of 12.5 metres below Chart Datum.

5.3.39 Paragraph 2 of the Requirement secures that in relation to any part of Work No.6 in the North East Spit Area, including any associated development or ancillary works, the depth protection required under sub-paragraph (1)(c), including the 0.5 metre over-dredge allowance, is to be preserved following the crossing of Work No.6 and the GridLink Interconnector Project cable(s) by installing Work No.6 at a depth that provides sufficient vertical clearance for the GridLink Interconnector Project cable(s) to be laid over it without compromising the depth protection required by sub-paragraph (1)(c).

5.3.40 Paragraph 3 states that no part of Work No.6, including any associated development or ancillary works, is to be installed within the Sea Link Exclusion Area as shown on the Areas of Safeguarded Water Depth Plan.

5.3.41 **DCO Requirement 18 (River Stour Channel):** This requirement states that installation of the marine cables in Pegwell Bay may not commence until a monitoring and contingency plan has been submitted to and approved by the Marine Management Organisation in consultation with the relevant planning authority and the Environment Agency and sets out the details to be included in the marine and contingency plan.

5.3.42 Mitigation and remediation measures will be agreed with and approved by the Environment Agency prior to the undertaking of any remedial works.

5.3.43 **DCO Requirement 19 (Emergency Planning):** This requirement sets out the emergency planning arrangements agreed with Suffolk County Council in respect of the Suffolk Resilience Forum Radiation Emergency Plan.

5.3.44 **DCO Requirement 20 (Reinstatement Planting plan)**: This requirement secures the submission of a reinstatement planting plan to be approved by the relevant planning authority prior to bringing a stage of the authorised development into operational use. Reinstatement planting works must be carried out in accordance with the relevant reinstatement planting plan for that stage of the authorised development, unless otherwise agreed with the relevant planning authority.

5.3.45 **DCO Requirement 21 (Mitigation of Intra-Project Cumulative Effects):** the requirement commits the undertaker to undertaking a review of the intra-project cumulative effects assessment submitted with the application once detailed design is complete and detailed construction and programme information is available.

5.3.46 **DCO Requirement 22 (Access to Pegwell Bay):** This requirement sets out the principles to control the access to Pegwell Bay and the use of the hoverport by vehicles and machinery. 22(2) also requires a report to be submitted to the relevant planning authority for approval (in consultation with Natural England and the Environment Agency) which sets out details of surveys carried out, proposals for vehicle routing and a monitoring programme to monitor the condition of the hoverport during construction.

5.3.47 **DCO Requirement 23 (Control of operational noise):** This requirement was proposed by the Secretary of State in its letter dated 28 August 2026. The requirement commits the undertaker to submitting an operational noise assessment for approval by the relevant planning authority prior to Work Nos. 3B, 9B and 11 coming into operation.

5.3.48 **DCO Requirement 24 (Temporary drainage in Suffolk):** This requirement states that details of the temporary drainage solution which is referenced in Document 9.17.1 Suffolk Drainage Strategy should be submitted to and approved by Suffolk County Council in consultation with the Environment Agency.

## 5.4 Schedule 4 (Discharge of requirements)

5.4.1 Schedule 4 sets out two mechanisms:

- the first applies to any consent, agreement or approval which needs to be obtained under the Requirements set out in Schedule 3, and specifies elements of the procedure to be followed;
- the second part clarifies the appeal procedure which applies in respect of any consent, agreement or approval which needs to be secured pursuant to the Requirements, any document referred to in the Requirements, or elsewhere in the Order.

5.4.2 Whilst it is acknowledged that the time limits included in Schedule 4 (in relation to the determination of applications made pursuant to the Requirements and any requests made by the relevant discharging authority for further information) do differ from the 42 day period which is recommended in Appendix 1 of Advice Note 15, National Grid considers that shorter time limits are necessary and proportionate in light of the immediate and pressing national need which the project is intended to address. These shorter time limits are precedented in other made Orders including the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024.

5.4.3 This schedule is based on Schedule 4 of the National Grid (Bramford to Twinstead Reinforcement) Development Consent Order 2024 and Schedule 4 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

5.4.4 Prior to deadline 7, the Applicant submitted **Application Document 9.154 Approach to Adopting DESNZ Requirement Discharge Unit for Sea Link**. In light of the likely establishment of a DESNZ unit to consolidate and deliver post-consent discharge functions in consultation with Local Authority Planning Departments, the Applicant has included amendments to the draft DCO to provide a mechanism for that DESNZ unit to have jurisdiction in respect of the discharge of requirements. Schedule 3, paragraph (1)(6) has been amended so that where written notice is received by the undertaker that a DESNZ unit has been established, reference to the "relevant planning authority" or as the case may be the "relevant highway authority" in each Requirement in Schedule 3 (requirements) or any document referred to in any requirement shall mean either the DESNZ unit or the body that would otherwise have been the relevant planning authority or relevant highway authority if not for the establishment of the DESNZ Unit.

5.4.5 Therefore, in Schedule 4 (1), where notice has been received by the undertaker that the DESNZ Unit is established, the undertaker may make an application for any consent, agreement or approval required by a requirement (including a consent, agreement or approval in respect of part of a requirement) or any document referred to in a requirement, to either the DESNZ Unit or the body which would otherwise have been the discharging authority.

## 5.5 Schedule 5 (Streets subject to street works)

5.5.1 Schedule 5 sets out the streets referred to in Article 11 (street works) subject to street works.

## 5.6 Schedule 6 (Streets subject to alteration of layout)

5.6.1 Schedule 6 sets out the streets, referred to in Article 14 (Power to alter layout etc. of streets), the layouts of which are subject to permanent or temporary alterations.

## 5.7 Schedule 7 (Streets and Public Rights of Way to be permanently stopped up)

5.7.1 Schedule 7 sets out the streets and public rights of way which are subject to permanent stopping up under Article 16 (Permanent stopping up of streets and public rights of way).

## 5.8 Schedule 8 (Temporary closure of Streets, Public Rights of Way and Permissive Paths)

5.8.1 Schedule 8 sets out the streets and public rights of way which are subject to temporary stopping up under Article 15 (Temporary closure of streets and public rights of way and permissive paths).

## 5.9 Schedule 9 (Access to works)

5.9.1 Schedule 9 sets out the locations, referred to in Article 17 (access to works), where access would be taken from the public highway, for construction and/or operation / maintenance purposes.

## 5.10 Schedule 10 (Modification of compensation and compulsory purchase enactments for creation of new rights)

5.10.1 Schedule 10 sets out, pursuant to Article 25 (compulsory acquisition of rights) sets out the modifications to the statutory provisions applicable to compensation and compulsory purchase under the Order where new rights are to be acquired or restrictions are to be imposed.

## 5.11 Schedule 11 (Land of which only temporary possession may be taken)

5.11.1 Schedule 11 sets out the land referred to in Article 27 (temporary use of land for carrying out the authorised project) which the undertaker may only temporarily occupy (albeit noting the wider temporary occupation power in respect of the Order Land) and the purpose for which that temporary occupation may be taken. The plots of land listed in Schedule 11 correspond with those plots of land which are labelled as Class 8 (temporary use for Construction, Mitigation, Maintenance and Dismantling of Redundant Infrastructure) coloured Pink on the land plans or Class 9 (temporary use for Access) coloured yellow on the land plans. A detailed explanation of the reasons for the temporary use of land and the extent of such powers is contained in the **Application Document 4.2 Statement of Reasons.**

## 5.12 Schedule 12 (Extinguishment of private rights and restrictive covenants relating to apparatus belonging to National Grid removed from land subject to temporary possession)

5.12.1 Schedule 12 sets out these plots where rights in relation to removed apparatus are to be extinguished under Article 40 (Extinguishment of private rights and restrictive covenants relating to apparatus belonging to National Grid removed from land subject to temporary possession).

## 5.13 Schedule 13 (Traffic regulation)

5.13.1 This article sets out the streets that are subject to traffic regulation measures further to Article 50 (Traffic regulation).

## 5.14 Schedule 14 (Trees subject to tree preservation orders)

5.14.1 This schedule sets out the trees subject to preservation orders further to Article 52 (Trees subject to tree preservation orders).

## 5.15 Schedule 15 (Protective provisions)

5.15.1 Schedule 15 sets out the Applicant's protective provisions. The protective provisions in Part 1 and 2 are the Applicant's standard protective provisions in favour of the following undertakers:

- electricity, gas, water and sewerage undertakers; and
- electronic communications code networks

5.15.2 In addition to the standard protective provisions in Schedule 15, the Applicant is negotiating bespoke protective provisions and other side agreements with a range of statutory undertakers and other parties who have requested them. Where sufficiently progressed, the Order has been updated to include protective provisions at deadline 7 for the following undertakers:

- Anglian Water
- Northumbrian Water
- Cadent Gas
- Network Rail
- Highways Authorities
- Southern Water
- Southern Gas Networks
- Port of London Authority
- London Gateway Port Limited
- East Anglia Three Offshore Wind Farm
- East Anglia Two Limited
- East Anglia One North Limited

5.15.3 Detailed updates relating to the ongoing engagement and position at the end of examination are set out within **Document 9.75: Schedule of Progress of Negotiations with Statutory Undertakers and Protective Provisions** submitted at Deadline 7.

## 5.16 Schedule 16 (Deemed Marine Licence)

5.16.1 Schedule 16 includes the deemed marine licence for the authorised development referred to in Article 47 (Deemed marine licence) which would be deemed to be granted for works comprised in the authorised development. The deemed marine licence is deliberately drafted as a standalone document as they are managed and enforced by the MMO not the relevant planning authority. There is considerable precedent for a similar approach to the marine licence taken in other offshore projects such as those applications for development consent for offshore wind farms and interconnector projects. The drafting also draws upon the marine licences granted by the MMO for the Scotland to England Green Link 1 project and the Eastern Green Link 2 project being developed by National Grid. Reference has also been made to the Five Estuaries Offshore Wind Farm Order 2025 which was granted on 17 December 2025.

### Part 1 – Licensed marine activities

5.16.2 Paragraph 1 *(Interpretation)* provides the definition and interpretation of certain terms and phrases used in the licence. Many of these are identical to the Development Consent Order, but some are provided to make sense within an offshore only context. It also includes contact details for relevant organisations.

5.16.3 Paragraphs 2 to 6 (Details of licensed marine activities) provide details of the licensable marine activities in relation to the construction, maintenance and operation of Work No.6 and Work No.12, and further associated development comprising such other works below MHWS as may become necessary or expedient and any ancillary works.

5.16.4 Work Number 6 involves the laying and burying of the marine electric cable and a fibre optic cable, trenchless entry/exit pits in both the Suffolk and Kent landfalls, marine cable protection works and temporary work areas for vessels to carry out intrusive and non-intrusive activities

5.16.5 Work Number 12 is concerned with the removal of and modification to existing overhead electric lines and the construction and installation of new overhead electric line from the new Kent Substation to the existing Richborough to Canterbury overhead electric line. Work No. 12 is included in this deemed marine licence as the overhead line crosses the River Stour where it is tidal.

5.16.6 It also describes the substances that may be disposed of as part of construction of the Authorised Development.

5.16.7 Paragraph 7 sets out the grid coordinates for those works within the deemed marine licence. Table 1 contains those grid coordinates for the marine cable area and Table 2 contains the grid coordinates for the access bridge and overhead cables over the River Stour (Kent).

5.16.8 Paragraph 8 confirms that the deemed marine licence shall remain in force until the scheme has been decommissioned (in accordance with a methodology and programme to be approved by the MMO).

5.16.9 Paragraph 10 confirms that the provisions of section 72(7) and (8) of the 2009 Act do not apply to any transfer of the deemed marine licence falling within Article 6 (transfer of benefit) of the Order. This is necessary to ensure that there is no conflict or unnecessary duplication of process between the operation of Article 6 of the Order and Section 72(7) of the 2009 Act**.**

5.16.10 Paragraph 10 addresses compliance with plans as amended and paragraph 11 confirms that any amendments made to any approved details must be minor or immaterial and it must be demonstrated in relation to them that they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

### Part 2 – Conditions

5.16.11 Condition 1 (Design parameters) sets out the design parameters for Work No. 6. It sets out various conditions governing activities within the Areas of Safeguarded Water Depth such as wet storage, cable joints and cable crossings

5.16.12 Condition 2 (Extension of time periods) provides the option for National Grid as the undertaker or the MMO, by agreement in writing with the other, of extending time frames that are set out within the licence.

5.16.13 Condition 3 (Notifications and inspections) provides for a procedure of supplying copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO and publicising commencement of the licensed activities.

5.16.14 Condition 4 (Pre-constructions plans and documentation) lists the pre-construction plans and documentation to be submitted to the MMO prior to the commencement of the licensed activities (or part of them) and includes details of which bodies are to be consulted on the plans and documentation.

5.16.15 Condition 5 (Reporting of engaged agents, contractors and vessels) requires the Undertaker to provide to the MMO written details of the name and function of any agents, contractors or sub-contractors to carry on any licensed activity and details of any vessel. Any change to the supplied details must be notified to the MMO in writing prior to the agents, contractors or vessels engaging in licensed activities.

5.16.16 Conditions 6 (Compass deviation) requires that a desk study must be undertaken and provided to the MMO prior to cable installation activities to establish the levels of electromagnetic deviation affecting ship compass and other navigation systems caused by the cable.

5.16.17 Condition 7 (Aids to navigation) provides for various matters in respect of aids to navigation including the requirement to maintain navigation aids.

5.16.18 Condition 8 (Chemicals, drilling and debris) sets standards that must be met by the Undertaker in respect of the chemicals and other substances that can be used and how they can be stored, transported and where they can be disposed of. In addition, there is a procedure to be followed in the event of dropped objects.

5.16.19 Condition 9 (Force majeure) provides an allowance for deposits within or outside of the Order limits but outside of a disposal site during an emergency situation, for the notification of such unauthorised deposit/disposal to the MMO, and a requirement for the Undertaker, at its own cost, to remove that deposit unless written approval is obtained from the MMO.

5.16.20 Condition 10 (Trenchless landfall techniques) provides a restriction on the installation activities at the landfall sites to ensure trenchless techniques are used between the onshore transition joint bay and the exit pits to avoid impacts to sensitive habitats.

5.16.21 Condition 11 (Red throated diver) places seasonal restrictions on various project activities to avoid impacts to red throated divers in areas where they are present, as well as setting out the use of best practice measures for the species.

5.16.22 Condition 12 (Maintenance) provides the undertaker with the ability to carry out repair and replacement works on the cable, as well as rebury a cable or replenish cable protection to needed areas, provided it does not significantly reduce water depth. Marine growth can also be removed if necessary.

5.16.23 Condition 13 (Deployment of cable protection) provides a time frame of 10 years after which the deployment of new areas of cable protection is restricted. It also stipulates that unless otherwise agreed by the MMO in writing, no cable protection may be deployed within the Sandwich Bay Special Area of Conservation (SAC) after the construction period has ended and any cable protection to be installed outside of the Sandwich Bay SAC following completion of construction in locations where cable protection was not installed during construction must be deployed within 10 years of completion of construction.

5.16.24 Condition 14 (Post construction) sets out the post-construction process for submitting as-built plans to the MMO to demonstrate the location of the cable and other required information. It also provides for the MMO to approve a written decommissioning plan at least 6 months prior to when decommissioning is due to commence.

5.16.25 Condition 15 (Pre-construction surveys and monitoring) sets out the details of the pre-construction surveys which must be carried out in accordance with the outline In Principle Monitoring Plan.

## 5.17 Schedule 17 (Public General Legislation)

5.17.1 This schedule makes provision applying, modifying and excluding statutory provisions referred to in Article 58 (Application, disapplication and modification of legislative provisions). S120(5)(a) of the Planning Act 2008 confirms that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.

**Hedgerow Regulations 1997**

5.17.2 Regulation 6(1) (Permitted work) of the 1997 Regulations allows for the removal of all or a part of a hedgerow in particular circumstances without first being required to notify and seek the consent of the local planning authority pursuant to Regulation 5. These are considered ‘permitted works’.

5.17.3 The range of permitted works under Regulation is broad and includes, at Regulation 6(1)(e), the removal of any hedgerow “....for carrying out development for which planning permission has been granted or is deemed to have been granted, except development for which permission is granted by article 3 of the Town and Country Planning General Permitted Development Order 1995 in respect of development of any of the descriptions contained in Schedule 2 to that Order other than Parts 11 (development under local or private Acts or orders) and 30 (toll road facilities);"

5.17.4 Paragraph 1 of Schedule 17 makes clear that the removal of any hedgerow to which the 1997 Regulations apply is a ‘permitted work’ if it is required for the purposes set out in Article 51 of the draft DCO. The practical effect of Paragraph 1 is to ensure alignment with Regulation 6(1)(e) of the 1997 Regulations which makes clear that operational development carried out pursuant to a planning permission is a ‘permitted work’.

5.17.5 Paragraph 1 therefore seeks to apply the same principles in the context of Article 51 so as not to create an enhanced burden to the Proposed Project which is above and beyond what the 1997 Regulations contemplate for planning permissions generally.

5.17.6 The Applicant has sought development consent for the authorised project under Article 3 of the draft DCO. As part of that application, consideration has been given to the removal of hedgerows and relevant plans are provided at Schedule 2 Part 5 of the draft DCO (Trees and hedgerows to be removed or managed plans).

5.17.7 Article 51 makes specific provision regarding the power to remove hedgerows as part of the authorised development, including also the constraints on exercise of that power.

5.17.8 The Environmental Statement sets out the extent of environmental assessment undertaken in respect of hedgerows (including important hedgerows). Once granted, the draft DCO will itself be secondary legislation (the 1997 Regulations likewise being secondary legislation), and the Applicant believes that it would be unnecessary to require further consent to be sought under the 1997 Regulations when acting in accordance with the provisions of Article 51, as the matters would already be subject to

control pursuant to the draft DCO. Hence the public policy objective, of controlling such works in respect of hedgerows, would already have been fulfilled.

**Local Government (Miscellaneous Provisions) Act 1976**

5.17.9 Section 42 (Certain future local Acts etc. to be subject to the planning enactments etc. except as otherwise provided) of the 1976 Act provides that certain future Acts will have effect subject to the listed planning enactments.

5.17.10 The effect of Schedule 17 is that Section 42 will not apply to the draft DCO (Document 3.1(F)) to the extent that section 42 would make provisions of the draft DCO authorising the authorised development subject to other provisions.

5.17.11 This modification is necessary to avoid any future local enactments undermining the powers and rights under the draft DCO.

5.17.12 The Applicant has sought development consent for the authorised development under Article 3 of the draft DCO. Once granted, the draft DCO will be secondary legislation. Any public interest objectives underlying the excluded provisions should be satisfied, where appropriate, through the ongoing examination process into the grant of the development consent. Consequently, the Applicant considers that it would be inappropriate for subsequent local legislation to impose controls and consent requirements which are not considered necessary at the point the draft DCO is made by the Secretary of State.

5.17.13 The Applicant notes that the modification of section 42 of the 1976 Act has been included in other recent DCOs including, for example, the Bramford to Twinstead DCO 2024, the West Midlands Rail Freight Interchange Order 2020 (see Paragraph 4 of Schedule 14) and the Sizewell C (Nuclear Generating Station) Order 2022 (see Paragraph 5 of Schedule 25).

**Neighbourhood Planning Act 2017**

5.17.14 The provisions of the 2017 Act insofar as they relate to temporary possession of land under Articles 27 (Temporary use of land for carrying out the authorised project), and 28 (Temporary use of land for maintaining the authorised project) of the draft DCO (Document 3.1(F)).

5.17.15 These provisions, when they come into force, will make temporary possession of land available to be sought as a statutory right, including in respect of a CPO.

5.17.16 The effect of Schedule 17 is that the relevant provisions of the 2017 Act will not apply when they come into force. The Applicant considers the exclusion of these temporary possession provisions under the 2017 Act necessary as they are yet to be brought into force and no subsidiary regulations have been made. Consequently, there is currently a lack of certainty around the requirements of the new temporary possession regime.

5.17.17 By excluding these provisions, the temporary possession regime created by Article 27 and 28 of the draft DCO will continue to be applied should the 2017 Act provisions come into force. This approach to temporary possession in a DCO and TWAO context is well-established and conventional, and this provision removes uncertainty in the future.

**Building Act 1984**

5.17.18 Part 1 of the 1984 Act deals with the power to make building regulations relating to the design and construction of buildings, the demolition of buildings and the services, fittings and equipment provided in or in connection with buildings.

5.17.19 The effect of Schedule 17 is that those provisions will be excluded, meaning nothing in Part 1 of the 1984 Act with respect to building regulations, and nothing in any building regulations, will apply in relation to a building used, altered or demolished, or intended for use, alteration or demolition, by the undertaker for the purposes of the authorised development before completion of construction.

5.17.20 The draft DCO and its associated controls already address the substantive matters which would normally be the subject of such consents and authorisations.

5.17.21 Further, the Applicant itself is subject to various standards and obligations, pursuant to its statutory duties under the Electricity Act 1989, its transmission licence (and conditions) from Ofgem, and other applicable obligations. Any works undertaken before completion of construction that may have fallen within the scope of Part 1 of the 1984 Act will need to be conducted in accordance with the provisions of the Order, and particularly Schedule 1 (Authorised Project), Schedule 2 (Plans) and Schedule 3 (Requirements).

5.17.22 The combined effect of these controls in the draft DCO will ensure the objectives underlying Part 1 of the 1984 Act are satisfied, whilst avoiding any undue interference to the implementation of the project that may be caused if Part 1 of the 1984 Act were to also apply.

**National Parks and Access to the Countryside Act 1949**

5.17.23 Sections 51, 52 and 55 of the National Parks and Access to Countryside Act 1949 relate to general provisions for approving and varying long-distance routes. Document 7.5.9.2 Outline Public Rights of Way Management Plan (Kent) [APP-353] explains that although not a PROW, the King Charles III England Coast Path is a long-distance national trail which follows the English coastline within close proximity to the Order Limits in Kent and also passes through the Order Limits at two locations).

5.17.24 The effect of Schedule 17 is that provisions to vary approved proposals or create a new long-distance route will not apply in relation to the authorised project. This modification is necessary to avoid any new or future amendment to the long-distance route undermining the powers and rights under the draft DCO. This disapplication is an established approach where a long-distance trail interfaces with the Order Limits and is precedented by the Thames Tideway Tunnel DCO 2014.

**Town and Country Planning Act 1990**

5.17.25 This provision sets out that the undertaker shall be deemed to be a person interested in the Order Land or any part of it for the purposes of Section 106 (1) of the TCPA 1990. The effect of the provision ensures that the Applicant will be deemed to have an interest in the land for the purposes of binding land for a s106 unilateral undertaking. It also stipulates for the avoidance of doubt that Section 106(3)(a) would include any transferee under Article 7 of the Order and Section 106(3)(b) would include the undertaker and any transferee or lessee who has the benefit of all or part of the provisions of the Order pursuant to Article 7 of the Order.

## 5.18 Schedule 18 (Amendment of local legislation)

5.18.1 This schedule lists the local legislation and byelaws National Grid seeks to exclude in relation to the proposed development further to Article 59 (Amendment of local legislation).

5.18.2 The Canterbury Navigation and Sandwich Harbour Act 1825 sets out powers to improve navigation of the River Stour from Canterbury through numerous parishes, including Minster. The River Stour runs through the Order limits and the draft DCO includes a power to temporarily close or carry out works in the relevant rivers, which includes a section of the River Stour, as highlighted on the Access, Public Rights of Way and Navigation Plans.

5.18.3 Section CXIII (Obstructions of the navigation to be removed) of the Canterbury Navigation and Sandwich Harbour Act 1825 section states that if any person obstructs the navigation of the river, it shall be lawful to remove or prevent such obstruction to the navigation. This section of legislation is inconsistent with the proposed power at Article 53 of the draft Order to temporarily close to navigation the relevant part of the River Stour in Kent, and therefore, it is proposed to be disapplied.

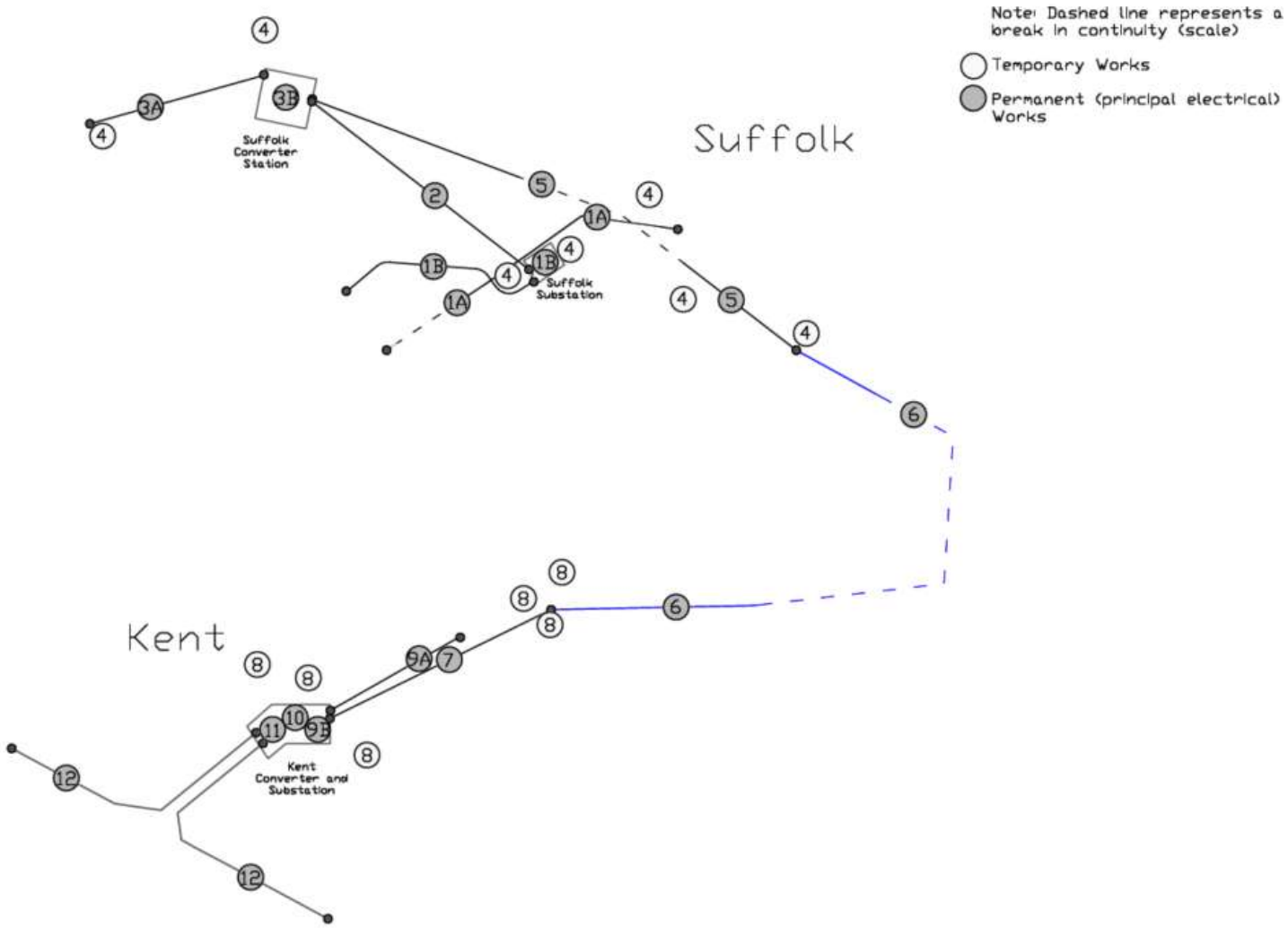
5.18.4 In this instance, there remains a risk nonetheless that the construction of the Proposed Project could give rise to a potential conflict with powers exercisable under this piece of local legislation if navigation of the River Stour is temporarily closed during the works to construct the proposed new section of overhead line.

5.18.5 The Applicant submits that in the event that the Secretary of State grants consent for these works via the draft Order, that this local legislative protection should be overridden to the degree that it would be inconsistent with the powers and provisions necessary to deliver Proposed Project.

## 5.19 Schedule 19 (Certified Documents)

5.19.1 This schedule lists those documents to be certified pursuant to Article 60 (certification of documents).

# Appendix A: Schematic




## Appendix Plate A.1 Schematic Drawing

# Appendix B: Table of Discharging Authorities

| *Requirement* | *Discharging authority** | *In consultation with* |
|---|---|---|
| Requirement 3(1) (Detailed Design) | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | In Suffolk, Suffolk County Council<br>In Kent, Kent County Council and Historic England<br>In Thanet, Dover District Council<br>In Dover, Thanet District Council |
| Requirement 3(2) (Detailed Design) | East Suffolk Council | Suffolk County Council |
| Requirement 3(3) (Detailed Design) | East Suffolk Council | Suffolk County Council<br>Environment Agency |
| Requirement 3(4) (Detailed Design) | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | In Suffolk, Suffolk County Council<br>In Kent, Kent County Council |
| Requirement 5 | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | In Suffolk, Suffolk County Council<br>In Kent, Kent County Council |
| Requirement 6: Onshore Construction Environmental Management Plan | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | In Suffolk, Suffolk County Council<br>In Kent, Kent County Council<br>In both Suffolk and Kent, Environment Agency |
| Requirement 6: Construction Traffic Management and Travel Plan - Suffolk | Suffolk County Council | East Suffolk Council |
| Requirement 6: Construction Traffic Management and Travel Plan - Kent | Kent County Council | Thanet District Council/Dover District Council |
| Requirement 6: Air Quality Management Plan - Suffolk | East Suffolk Council | Suffolk County Council |

| | | |
|---|---|---|
| Requirement 6: Air Quality Management Plan - Kent | In Thanet, Thanet District Council<br>In Dover, Dover District Council | Kent County Council |
| Requirement 6: Landscape and Ecological Management Plan (LEMP) - Suffolk | East Suffolk Council | Suffolk County Council<br>Statutory nature conservation body<br>Environment Agency |
| Requirement 6: Landscape and Ecological Management Plan (LEMP) - Kent | In Thanet, Thanet District Council<br>In Dover, Dover District Council | Kent County Council<br>Statutory nature conservation body<br>Environment Agency<br>National Trust |
| Requirement 6: Construction Noise and Vibration Management Plan (NVMP) - Suffolk | East Suffolk Council | Suffolk County Council<br>Environment Agency |
| Construction Noise and Vibration Management Plan (NVMP) - Kent | In Thanet, Thanet District Council<br>In Dover, Dover District Council | Kent County Council<br>Environment Agency |
| Requirement 6: Public Rights of Way (PRoW) Management Plan - Suffolk | Suffolk County Council | East Suffolk Council |
| Requirement 6: Public Rights of Way (PRoW) Management Plan - Kent | Kent County Council | Thanet District Council<br>Dover District Council |
| Requirement 6: Soil Management Plan - Suffolk | East Suffolk Council | Suffolk County Council |
| Requirement 6: Soil Management Plan - Kent | In Thanet, Thanet District Council<br>In Dover, Dover District Council | Kent County Council |
| Requirement 6: Materials and Waste Management Plan - Suffolk | East Suffolk Council | Suffolk County Council<br>Environment Agency |
| Requirement 6: Materials and Waste | In Thanet, Thanet District Council | Kent County Council |

| | | |
|---|---|---|
| Management Plan - Kent | In Dover, Dover District Council | Environment Agency |
| Requirement 6: Drainage Management Plan - Suffolk | Suffolk County Council | East Suffolk Council<br>Environment Agency |
| Requirement 6: Drainage Management Plan - Kent | Kent County Council | Thanet District Council<br>Dover District Council<br>Statutory nature conservation body<br>Environment Agency |
| Requirement 6: Flood Management Plan (FMP) | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | In Suffolk, Suffolk County Council<br>In Kent, Kent County Council<br>In both Suffolk and Kent, Environment Agency |
| Requirement 7 | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | |
| Requirement 7(3) | In Suffolk, Suffolk County Council<br>In Kent, Kent County Council | |
| Requirement 8 (Retention and Protection of existing trees and hedgerows) | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | In Suffolk, Suffolk County Council<br>In Kent, Kent County Council |
| Requirement 9 (Reinstatement Schemes) | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | |
| Requirement 10 (Unsuspected contamination) | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | Environment Agency |
| Requirement 11 (Removal of temporary bridges and culverts) | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | |
| Requirement 12 (Highway works) | In Suffolk, Suffolk County Council | |

| | | |
|---|---|---|
| | In Kent, Kent County Council | |
| Requirement 13 (Decommissioning) | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | Environment Agency |
| Requirement 14 (Archaeology) | In Suffolk, Suffolk County Council<br>In Kent, Kent County Council | Historic England |
| Requirement 16(6) (Trenchless Landfall Techniques) | MMO | |
| Requirement 16(6) (Trenchless Landfall Techniques) | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | Statutory nature conservation body |
| Requirement 18(1) (River Stour Channel) | MMO | Environment Agency<br>In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council |
| Requirement 18(2) & (3) (River Stour Channel) | Environment Agency | |
| Requirement 19 (Emergency Planning) | Suffolk County Council | Sizewell Emergency Planning Consultative Committee and Suffolk Resilience Forum and, as appropriate, the Office for Nuclear Regulation. |
| Requirement 20 (Reinstatement Planting Plan) | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | |
| Requirement 21 (Mitigation of Intra-Project Cumulative Effects) | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | |
| Requirement 22 (Access to Pegwell Bay) | Thanet District Council | Environment Agency<br>Statutory nature conservation body |

| | | |
|---|---|---|
| Requirement 23 (Control of operational noise | In Suffolk, East Suffolk Council<br>In Thanet, Thanet District Council<br>In Dover, Dover District Council | |
| Requirement 24 (Temporary drainage in Suffolk) | Suffolk County Council | Environment Agency |

* subject to the provisions of Requirement 1(6) and the establishment of the DESNZ Unit.

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