



Hornsea Project Four: Draft Development Consent Order

201* No. 0000

INFRASTRUCTURE PLANNING

The Hornsea Four Offshore Wind Farm Order

Made - - - - []

Coming into force - - []

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An application has been made to the Secretary of State for an order under the Planning Act 2008 (“the 2008 Act”)(a).

The application was examined by the Examining Authority, which has made a report to the Secretary of State under section 74(2) of the 2008 Act.

The Examining Authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74 of the 2008 Act made a report and recommendation to the Secretary of State.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(b) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).

(b) S.I. 2017/572

The Secretary of State, having decided the application, has determined to make an Order giving effect to the to the proposals comprised in the application on the terms in the opinion of the Secretary of State are not materially different from those proposed in the application.

[The Secretary of State is satisfied that open space within the Order land, when burdened with any new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies].

The Secretary of State, in exercise of the powers conferred by sections 114, 120 and 149A of the 2008 Act, makes the following Order—

PART 1 PRELIMINARY

Citation and commencement

1. This Order may be cited as the Hornsea Four Offshore Wind Farm Order and comes into force on [] 202[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“the 1989 Act” means the Electricity Act 1989(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“the 1991 Act” means the New Roads and Street Works Act 1991(g);

“the 2003 Act” means the Communications Act 2003(h);

“the 2004 Act” means the Energy Act 2004(i);

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009(j);

“the 2011 Regulations” means the Marine Licensing (Licence Application Appeals) Regulations 2011(k);

(a) 1961 c.33

(b) 1965 c.56

(c) 1980 c.66

(d) 1981 c.66

(e) 1989 c.29

(f) 1990 c.8

(g) 1991 c.22. Section 48(sA) was inserted by section 124 of the Local Transport Act 2008 (C.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18)

(h) 2003 c. 21

(i) 2004 c.20

(j) 2009 c.23

(k) S.I. 2011/934

“access to works plan” means the plan or plans certified as the access to works plan or plans by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (ancillary works) and any other works authorised by this Order and which are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 (authorised development);

“authorised project” means the authorised development and the ancillary works authorised by this Order;

“the book of reference” means the document certified by the Secretary of State as the book of reference for the purposes of the Order under article 36 (certification of plans and documents etc);

“buoy” means any floating device used for navigational purposes or measurement purposes;

“cables” means up to 600kV cables for the transmission of electricity, including one or more cable crossings;

“cable circuits” means a number of electrical conductors necessary to transmit electricity between two points within the authorised development; this comprises, in the case of HVAC transmission, three conductors which may be bundled as one cable or take the form of three separate cables, and, in the case of HVDC transmission two conductors, which may be attached together or take the form of single cables, and in either case the circuit may include one or more auxiliary cables (normally fibre optic cables) for the purpose of control, monitoring, protection or general communications;

“cable crossings” means a crossing of existing sub-sea cables or pipelines or other existing infrastructure by a cable or, where cables run together in parallel, a set of cables, authorised by this Order together with physical protection measures including rock placement or other protection measures;

“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, and/or rock placement (but not material used for cable crossings);

“carriageway” has the same meaning as in the 1980 Act;

“commence”, means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for operations consisting of pre-construction monitoring surveys approved under the deemed marine licences, and (b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project, other than onshore site preparation works, and the words “commencement” and “commenced” must be construed accordingly;

“commissioning” means the process of assuring that all systems and components of the authorised development are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker;

“commitments register” means the document certified as the commitments register by the Secretary of State for the purposes of this Order;

“connection works” means Work Nos. 6 to 10 and any related further associated development in connection with those works;

“deemed marine licences” means the marine licences set out in Schedules 11 and 12;

“energy balancing infrastructure” means infrastructure used for the balancing of the output of electrical energy to the national grid;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“highway” and “highway authority” have the same meaning as in the 1980 Act(a);

“horizontal directional drilling” refers to a boring technique involving drilling in an arc between two points;

“HVAC” means high voltage alternating current;

“HVDC” means high voltage direct current;

“jacket foundation” means a lattice type structure constructed of steel, which may include scour protection and additional equipment such as, J-tubes, corrosion protection systems and access platforms;

“joint bay” means an excavation located at regular intervals along the cable route consisting of a concrete flat base slab constructed beneath the ground to facilitate the jointing together of the cables;

“land plan” means the plan or plans certified as the land plan or plans by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“LAT” means lowest astronomical tide;

“lead local flood authority” has the meaning in section 6(7) of the Flood and Water Management Act 2010(b);

“link box” means the underground metal box placed within a plastic or concrete pit where the metal sheaths between adjacent export cable sections are connected and earthed installed within a ground level manhole or inspection chamber to allow access to the link box for regular maintenance or fault-finding purposes;

“logistics compound” means a construction site associated with the connection works including central offices, welfare facilities, and storage for construction of the authorised project;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace, to the extent assessed in the environmental statement; and

“maintenance” must be construed accordingly;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“mean low water springs” or “MLWS” means the lowest level which spring tides reach on average over a period of time;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel pile, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“MSL” means mean sea level;

“offshore accommodation platform” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the wind turbine generators;

“offshore electrical installations” means the offshore type 1 transformer substations, the offshore type 2 transformer substations, the offshore HVAC booster stations, the offshore type 1 HVDC converter substations and the offshore type 2 HVDC converter substations forming part of the authorised development;

“offshore HVAC booster station” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

(a) electrical equipment required to provide reactive power compensation; and

(a) “highway” is defined in section 328(1) for “highway authority” see section 1
(b) 2010 c.29

(b) housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the substation;

“offshore HVDC converter station” means a structure above LAT and attached to the seabed by means of a foundation, with equipment to convert the three-phase HVAC power generated at the wind turbine generators into DC power.

“the offshore Order limits and grid coordinates plan” means the plan or plans certified by the Secretary of State as the offshore Order limits and grid coordinates plan for the purposes of the Order under article 36 (certification of plans and documents etc);

“offshore transformer substation” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

(a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage and provide reactive power compensation; and

(b) housing accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“offshore type 1 HVDC converter substation” means the small version of the offshore transformer substations assessed in the environment statement;

“offshore type 2 HVDC converter substation” means the large version of the offshore transformer substations assessed in the environment statement;

“offshore type 1 transformer substation” means the small version of the offshore transformer substations assessed in the environment statement;

“offshore type 2 transformer substation” means the large version of the offshore transformer substations assessed in the environment statement;

“offshore works” means Work Nos. 1, 2, 3, 4 and 5 and any related further associated development in connection with those works;

“offshore works plans” means the plan or plans certified as the offshore works plans by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc);

“onshore construction works” means—

(c) temporary haul roads;

(d) vehicular accesses; and

(e) logistics compound(s).

“onshore HVDC/HVAC substation” means a compound, comprising the onshore HVDC converter station or the onshore HVAC substation, containing energy balancing infrastructure and electrical equipment required to switch, transform, convert electricity and provide reactive power compensation, with external landscaping and means of access;

“onshore site preparation works” means operations consisting of site clearance, pre-planting of landscaping works, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, creation of site accesses and the temporary display of site notices or advertisements;

“the Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

“the onshore Order limits plan” means the plans certified by the Secretary of State as the onshore Order limits plan for the purposes of the Order under article 36 (certification of plans and documents etc);

“onshore works plans” means the plan or plans certified as the onshore works plans by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc);

“the Order limits” means the limits shown on the offshore Order limits and grid coordinates plan and the onshore Order limits plan within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 2 of Part 1 of Schedule 1 to this Order;

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“outline construction traffic and travel management plan” means the document certified as the outline construction traffic and travel management plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“outline ecological management plan” means the document certified as the outline ecological management plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“outline landscape management plan” means the document certified as the outline landscape management plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc); “outline marine mammal mitigation protocol” means the document certified as the outline marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“outline marine written scheme of investigation” means the document certified as the outline offshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“outline onshore infrastructure drainage strategy” means the document certified as the outline infrastructure drainage strategy by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“outline onshore written scheme of investigation” means the document certified as the outline onshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure jacket foundations;

“pontoon gravity base 1 foundation” means a structure principally of steel, concrete, or steel and concrete with a base made up of up to two rectangular pontoons which rests on the seabed due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“pontoon gravity base 2 foundation” means a structure principally of steel, concrete, or steel and concrete with a base made up of a pontoon arranged in a rectangle around an open centre which rests on the seabed due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“public rights of way plan” means the plan or plans certified as the public rights of way plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“relevant planning authority” means East Riding of Yorkshire Council, or any successor to it as planning authority for the land in question;

“requirements” means those matters set out in Part 3 of Schedule 1 (requirements) to this Order;

“scour protection” means measures to prevent loss of seabed sediment around any structure placed in or on the seabed by use of protective aprons, mattresses or rock and gravel placement;

“SNCB” means a statutory nature conservation body, being an organisation charged by government with advising on nature conservation matters;

“street” means a street within the meaning of section 48 of the 1991 Act(a), together with land on the verge of a street or between two carriageways, and includes any footpath and any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act(b);

“streets plan” means the plan or plans certified as the streets plan or plans by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“suction bucket” means a steel cylindrical structure attached to the legs of a jacket foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“mono suction bucket foundation” means a steel cylindrical structure which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential, and may include scour protection and additional equipment such as J-tubes;

“transition joint bay” means the underground concrete bays in Work No. . 5 where the offshore export cable circuits comprised in Work No. 6 are jointed to the onshore export cable circuits;

“transition piece” means the metal structure attached to the top of the foundation where the base of the wind turbine generator is connected and may include additional equipment such as J-tubes, corrosion protection systems, boat access systems, access platforms, craneage, electrical transmission equipment and associated equipment;

“tree preservation order and hedgerow plan” means the plan or plans certified as the tree preservation order and hedgerow plan or plans by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“undertaker” means, subject to article 5(2) (benefit of the order), Orsted Hornsea Project Four Limited (company number 08584182);

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water; and

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation or transition piece;

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain, anything in, on or under land or in the air-space above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the imposition of restrictive covenants are references to the creation of rights over the land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or which is an interest otherwise comprised in the Order land.

(3) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) The expression “includes” is to be construed without limitation unless the contrary intention appears.

(a) Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26).

(b) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c.7)

(6) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to the requirements, Work Nos. 1 to 5 must be constructed within the Order limits seaward of MHWS and Work Nos. 6 to 15 must be constructed within the Order limits landward of MHWS.

Power to maintain authorised project

4.—(1) The undertaker may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain any further licence under Part 4 of the 2009 Act (marine licensing) for offshore works not covered by the deemed marine licences.

Benefit of the Order

5.—(1) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including the deemed marine licences, in whole or in part) and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of the Order (including the deemed marine licences, in whole or in part) and such related statutory rights as may be so agreed.

except where paragraph (8) applies, in which case no consent of the Secretary of State is required.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraphs (3), (5), (6), (7) (9), (10) and (12), shall include references to the transferee or lessee.

(3) The undertaker shall consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application and the Secretary of State shall provide a response within four weeks of receipt of the notice.

(4) The Secretary of State shall consult the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the provisions of the deemed marine licences.

(5) The Secretary of State shall determine an application for consent made under this article within a period of eight weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker.

(6) Where the Secretary of State is minded to refuse an application for consent made under this article and notifies the undertaker accordingly, or the Secretary of State fails to determine the application for consent under this article within the period prescribed in paragraph (5), the undertaker may refer the matter for determination in accordance with article 37 (arbitration).

(7) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (1)—

- (a) the benefit transferred or granted (“the transferred benefit”) shall include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(8) This paragraph applies to any provisions of this Order and its related statutory rights where—

- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply, etc.) of the 1989 Act; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made,
 - (ii) any such claim has been made and has been compromised or withdrawn,
 - (iii) compensation has been paid in final settlement of any such claim,
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim, or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation shall be payable.

(9) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority.

(10) The notice required under paragraphs (3) and (9) must—

- (a) state—
 - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
 - (ii) subject to paragraph (11), the date on which the transfer will take effect;
 - (iii) the provisions to be transferred or granted; and
 - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (7)(c), will apply to the person exercising the powers transferred or granted; and
 - (v) where paragraph (8) does not apply, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) be accompanied by—
 - (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
 - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(11) The date specified under paragraph (10)(a)(ii) in respect of a notice served in respect of paragraph (9) must not be earlier than the expiry of five days from the date of the receipt of the notice.

(12) The notice given under paragraph (9) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(13) Sections 72(7) and (8) of the 2009 Act (variation, suspension, revocation and transfer) do not apply to a transfer or grant of the whole or part of the benefit of the provisions of the deemed marine licences to another person by the undertaker pursuant to an agreement under paragraph (1).

(14) The provisions of articles 8 (street works), 10 (temporary stopping up of streets), 18 (compulsory acquisition of land), 20 (compulsory acquisition of rights), 26 (temporary use of land for carrying out the authorised project) and 27 (temporary use of land for maintaining the authorised project) shall have effect only for the benefit of the named undertaker and a person who is a transferee or lessee who is also—

- (a) in respect of Work Nos. 6 to 10 a person who holds a licence under the 1989 Act, or
- (b) in respect of functions under article 8 (street works) relating to a street, a street authority.

Application and modification of legislative provisions

6. The following provisions are modified to the extent specified, or do not apply, in relation to the construction or works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

- (a) Regulation 6 of the Hedgerows Regulations 1997^(a) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—
 - “or (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”
- (b) the provisions of the Neighbourhood Planning Act 2017^(b) insofar as they relate to temporary possession of land under articles 26 (temporary use of land for carrying out the authorised project) and 27 (temporary use of land for maintaining the authorised project) of this Order.

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990^(c) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), or the Control of Pollution Act 1974^(d); or

(a) SI 1997/1160

(b) 2017 c.20

(c) 1990 c.43 There are amendments to this Act which are not relevant to the Order.

(d) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.

- (ii) is a consequence of the construction, maintenance or decommissioning of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement 20 (control of noise during the operational phase); or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction, maintenance or decommissioning of the authorised project.

PART 3

STREETS

Street works

8.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (Streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Application of the 1991 Act

9.—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under article 8 (street works); and
- (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 10 (temporary stopping up of streets),

whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act^(a) are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);

^(a) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c.18)

- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (g).

(3) Section 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Temporary stopping up of streets

10.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limiting paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the streets set out in column (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the streets plans,, in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site—

- (a) any street referred to in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to the consent.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b) that street authority is deemed to have granted consent.

Stopping up and diversion of public rights of way

11.—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) temporarily stop up each of the public rights of way specified in column (2) of Part 1 of Schedule 4 (public rights of way to be temporarily stopped up or diverted) to the extent specified in column (3), by reference to the letters shown on the public rights of way plan;
- (b) stop up each of the public rights of way specified in column (1) of Part 2 Schedule 4 (public rights of way to be temporarily stopped up or diverted) to the extent specified, in column (2) of that Schedule; and
- (c) provide the substitute public rights of way described in column (3) of Part of Schedule 5 between the specified terminus points.

Access to works

12.—(1) The undertaker may, for the purposes of the authorised project—

- (a) form, lay out and maintain a means of access, or improve or maintain an existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority in accordance with requirement 10 (highway accesses), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

(2) If the relevant planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b) that relevant planning authority is deemed to have granted approval.

Agreements with street authorities

13.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 8(1) (street works).

(2) Such agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Power to alter layout etc. of streets

14.—(1) Subject to paragraphs (2) and (3), the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with constructing, operating and maintaining the authorised development alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of the street including any kerb, footway, cycle track or verge;
- (b) make and maintain passing place(s).

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority.

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

15.—(1) The undertaker may use any watercourse or any public sewer, drain or other suitable land for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may inspect, lay down, take up and alter pipes and may,

on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to article 15(1) except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article damage or interfere with the bed or banks of any watercourse forming part of a main river as defined under section 113(1) of the Water Resources Act 1991(b).

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise any activity for which an environmental permit is required by regulation 12 (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(c).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

Protective work to buildings

16.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or
- (b) after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised project is commissioned.

(a) 1991 c.56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(b) 1991 c.57

(c) S.I. 2016/1154

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the power and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 37 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the day on which the part of the authorised project carried out in the vicinity of the building is commissioned it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the carrying out, maintenance or use of the authorised project; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the carrying out, maintenance or use of the authorised project.

Authority to survey and investigate the land onshore

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or any land which may be affected by the authorised project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including the digging of trenches; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land forming a railway without the consent of Network Rail^(a);
- (b) in land held by or in right of the Crown without the consent of the Crown;
- (c) in land located within the highway boundary without the consent of the highway authority; or
- (d) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(c) in the case of a highway authority; or
- (b) under paragraph (4)(d) in the case of a street authority;

that authority is deemed to have granted consent.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(a) As defined in Part 5 of Schedule 9 (Protection for Network Rail Infrastructure Limited).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project, or to facilitate it, or as is incidental to it.

(2) This article is subject to paragraph (2) of article 20 (compulsory acquisition of rights) and article 26 (temporary use of land for carrying out the authorised project).

Time limit for exercise of authority to acquire land compulsorily

19.—(1) After the end of the period of 7 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights etc.

20.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 21 (private rights) and article 28 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 6 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act, and Schedule 2A (counter-notice requiring purchase of land) (as substituted by paragraph 10 of Schedule 7 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictions), where the undertaker creates or acquires an existing right over land or restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Private Rights

21.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 18 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 18 (compulsory acquisition of land)—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 20 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenants under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 28 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of the land,
 - (iii) the undertaker's entry onto the land, or
 - (iv) the undertaker's taking temporary possession of the land,that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 22.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of act), for subsection 2 substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In Section 5(2) (earliest date for execution of declaration) omit the words from “and this subsection” to the end.
- (5) Section 5A (time limit for general vesting declaration) is omitted(a).
- (6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent) the seven year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Hornsea Four Offshore Wind Farm Order 202[]”.
- (7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 23(1) (acquisition of subsoil only) of the Hornsea Four Offshore Wind Farm Order 202[], which excludes the acquisition of subsoil only from this Schedule.”
- (10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 24 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

- 23.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) or article 20 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.
- (2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.
- (3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—
- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
 - (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
 - (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.
- (4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

(a) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).

Modification of Part 1 of the Compulsory Purchase Act 1965

24.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

- (2) In section 4A(1) (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period specified in section 4” substitute “the seven year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Hornsea Four Offshore Wind Farm Order 202[]”.
- (3) In section 11A (powers of entry: further notice of entry)—
- (a) in subsection (1)(a), after “land” insert “under that provision”;
 - (b) in subsection (2), after “land” insert “under that provision”.
- (4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 19 (time limit for exercise of authority to acquire land compulsorily) of the Hornsea Four Offshore Wind Farm Order 202[]”.
- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) for paragraphs 1(2) and 14(2) substitute—
“(2) But see article 23(3) (acquisition of subsoil only) of the Hornsea Four Offshore Wind Farm Order 202[], which excludes the acquisition of subsoil only from this Schedule”; and
 - (b) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 16 (protective work to buildings), article 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) of the Hornsea Four Wind Farm Order 202[].

Rights under or over streets

25.—(1) The undertaker may enter on and appropriate so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and

who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised project

26.—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project;
- (e) construct any works, or use the land, as specified in relation to that land in column 3 of Schedule 8 (land of which temporary possession may be taken), or any mitigation works;
- (f) construct such works on that land as are mentioned in Part 1 of Schedule 1 (authorised development); and
- (g) carry out mitigation works required pursuant to the requirements in Schedule 1.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 8 (land of which temporary possession may be taken); or
- (b) in the case of land specified in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the part of the authorised project for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;

- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 2 (streets subject to street works); or
- (d) restore the land on which any works have been carried out under paragraph (1)(g) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 1.

(5) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 20 (compulsory acquisition of rights) to the extent that such land is listed in column (1) of Schedule 6; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 23 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised project

27.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", means the period of 5 years beginning with the date on which the authorised project first exports electricity to the national electricity transmission network.

Statutory undertakers

28. Subject to the provisions of Schedule 9 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plan within the Order land; and
- (b) extinguish or suspend the rights of, or remove, relocate or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

Recovery of costs of new connections

29.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 28 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this paragraph—

"public communications provider" has the same meaning as in section 151(1) of the 2003 Act; and

"public utility undertaker" has the same meaning as in the 1980 Act.

PART 6 OPERATIONS

Operation of generating station

30.—(1) The undertaker is authorised to operate the generating station comprised in the authorised project.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Deemed marine licences under the 2009 Act

31. The deemed marine licences set out in Schedules 11 (deemed generator assets marine licence under the 2009 Act) and 12 (deemed transmission assets marine licence under the 2009 Act) respectively, are deemed to be granted to the undertaker under Part 4 of the 2009 Act for the licensed marine activities set out in Part 1, and subject to the conditions set out in Part 2 of each of those Schedules.

PART 7 MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

32.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

33. Development consent granted by this Order is treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees and removal of hedgerows

34.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits that is not subject to a tree preservation order or any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with onshore site preparation works, the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not do any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purpose of the authorised project—

- (a) subject to paragraph (2) above, remove any hedgerows within the Order limits and specified in Schedule 10, Part 1 (removal of hedgerows) that may be required for the purposes of carrying out the authorised project; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 10, Part 2 (removal of important hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997.

Trees subject to tree preservation orders

35.—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made before and after [] or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with onshore site preparation works the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall do no unnecessary damage to any tree and shall pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Certification of plans and documents, etc.

36.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the commitments register;
- (c) the design vision;
- (d) the environmental statement;
- (e) the location plans;
- (f) the land plans;
- (g) the layout principles;

- (h) the offshore Order limits and grid coordinates plan;
- (i) the offshore works plans;
- (j) the onshore Order limits plan;
- (k) the onshore works plans;
- (l) the access to works plan;
- (m) the streets plan;
- (n) the public rights of way plan;
- (o) the tree preservation order and hedgerow plan;
- (p) the crown land plans – onshore and offshore;
- (q) the onshore limits of deviation plan;
- (r) the outline marine mammal mitigation protocol
- (s) the outline construction traffic and travel management plan;
- (t) the outline code of construction practice;
- (u) the outline ecological management plan;
- (v) the outline landscape management plan;
- (w) the outline onshore infrastructure drainage strategy;
- (x) the outline onshore written scheme of investigation;
- (y) the in-principle monitoring plan;
- (z) the outline marine written scheme of investigation; and

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made;

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

Arbitration

37.—(1) Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 13 of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Where the referral to arbitration under paragraph (1) relates to a difference with the Secretary of State, in the event that the parties cannot agree upon a single arbitrator within the specified time period stipulated in paragraph (1), either party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

(3) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

Requirements, appeals, etc.

38.—(1) Sub-section (1) of section 78 of the 1990 Act applies to the development consent granted by this Order and to the requirements except that it is modified so as to read for the purposes of this Order only as follows—

(a) after “local planning authority” insert “or Secretary of State”

(b) after subsection (b) insert the following—

“refuse or fails to determine an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or grant it subject to conditions; or”

(c) after Sub-section (1), insert the following—

“(1A) Where the appeal under sub-section (1) relates to a decision by the Secretary of State, the appeal shall be decided by a Secretary of State who would not be responsible for determining an application for development consent with the subject matter of the Hornsea Four Offshore Wind Farm Order 202[] if section 103(1) of the 2008 Act applied.”

(2) Sections 78 and 79 of the 1990 Act have effect in relation to any appeal under the terms of this article except that the Secretary of State in question is the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order if section 103(1) of the 2008 Act applied.

(3) The terms of any development order, and other rules and regulations which apply to applications pursuant to conditions or the subject matter of section 78 of the 1990 Act apply, insofar as they are not inconsistent with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and any other orders, rules or regulations made under the 2008 Act, to any application or appeal made under the requirements specified in paragraph (1).

(4) Where the MMO refuses an application for approval under condition 12 of Part 2 of Schedule 11 or condition 12 of Part 2 of Schedule 12 and notifies the undertaker accordingly, or the MMO fails to determine the application for approval within four months commencing on the date the application is received by the MMO, the undertaker may by notice appeal against such a refusal or non-determination and the 2011 Regulations shall apply subject to the modifications set out in paragraph (5).

(5) The 2011 Regulations are modified so as to read for the purposes of this Order only as follows—

(a) In regulation 6(1) (time limit for the notice of appeal) for the words “6 months” there is substituted the words “4 months”.

(b) For regulation 4(1) (appeal against marine licensing decisions) substitute—

“A person who has applied for approval under condition 12 of Part 2 of Schedule 11 or condition 12 of Part 2 of Schedule 12 of the Hornsea Four Offshore Wind Farm Order 202[] may by notice appeal against a decision to refuse such an application or a failure to determine such an application.”

(c) For regulation 7(2)(a) (contents of the notice of appeal) substitute—

“a copy of the decision to which the appeal relates or, in the case of non-determination, the date by which the application should have been determined; and”

(d) In regulation 8(1) (decision as to appeal procedure and start date) for the words “as soon as practicable after” there is substituted the words “within the period of [2] weeks beginning on the date of”.

(e) In regulation 10(3) (representations and further comments) after the words “the Secretary of State must” insert the words “within the period of [1] week”

(f) In regulation 10(5) (representations and further comments) for the words “as soon as practicable after” there is substituted the words “within the period of [1] week of the end of”.

- (g) In regulation 12(1) (establishing the hearing or inquiry) after the words “(“the relevant date”)” insert the words “which must be within [14] weeks of the start date”.
- (h) For regulation 18(4) substitute—
 “Subject to paragraphs (1) and (3), each party should bear its own costs of a hearing or inquiry held under these Regulations.”
- (i) For regulation 22(1)(b) and (c) (determining the appeal—general) substitute—
 “(b) allow the appeal and, if applicable, quash the decision in whole or in part;
 (c) where the appointed person quashes a decision under sub-paragraph (b) or allows the appeal in the case of non-determination, direct the Authority to approve the application for approval made under condition 12 of Part 2 of Schedule 11 or condition 12 of Part 2 of Schedule 12 of the Hornsea Four Offshore Wind Farm Order 202[].”
- (j) In regulation 22(2) (determining the appeal—general) after the words “in writing of the determination” insert the words “within the period of [12] weeks beginning on the start date where the appeal is to be determined by written representations or within the period of [12] weeks beginning on the day after the close of the hearing or inquiry where the appeal is to be determined by way of hearing or inquiry”.]

Abatement of works abandoned or decayed

39. Where Work Nos 1, 2 or 3 or all of them or any part of them, is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, by notice in writing require the undertaker at its own expense either to repair, make safe and restore one or both of those Works, or any relevant part of them, or to remove them and, without prejudice to any notice served under section 105(2) of the 2004 Act(a) restore the site to a safe and proper condition, to such an extent and within such limits as may be specified in the notice.

Saving provisions for Trinity House

40. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown rights

41.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take possession of, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(a) Section 105(2) was substituted by section 69(3) of the Energy Act 2008 (c.32).

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Protective provisions

42. Schedule 9 (protective provisions) has effect.

Funding

43.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land.

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 20 (compulsory acquisition of rights);
- (c) article 21 (private rights);
- (d) article 23 (acquisition of subsoil only);
- (e) article 25 (rights under or over streets);
- (f) article 26 (temporary use of land for carrying out the authorised project);
- (g) article 27 (temporary use of land for maintaining the authorised project); and
- (h) article 28 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by Authority of the Secretary of State for Business, Energy and Industrial Strategy

Address
Date

Name
Head of []
Department of Business, Energy and Industrial Strategy

SCHEDULE 1

AUTHORISED PROJECT

PART 1

AUTHORISED DEVELOPMENT

1. A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act which is located in the North Sea approximately 65 kilometres due east of Flamborough Head at its closest point comprising—

Work No. 1—

- (a) an offshore wind turbine generating station with a gross electrical output of over 100 megawatts comprising up to 180 wind turbine generators, each fixed to the seabed by one of monopile foundation, mono suction bucket foundation, or jacket foundation;
- (b) one offshore accommodation platform fixed to the seabed within the area shown on the offshore works plan by one of monopile foundation, mono suction bucket foundation, jacket foundation, and which may be connected to each other or one of the offshore substations within Work No. 2 by an unsupported bridge; and
- (c) a network of cables between the wind turbine generators, and between the wind turbine generators and Work No. 2, including one or more cable crossings;

and associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2—

- (a) up to six offshore type 1 transformer substations each fixed to the seabed by one of monopile foundation, mono suction bucket foundation, or jacket foundations, and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge; or
- (b) up to three offshore type 2 transformer substations each fixed to the seabed by one of monopile foundations, mono suction bucket foundations, jacket foundations, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations, and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge;
- (c) in the event that the mode of transmission is HVDC, up to three HVDC converter substations fixed to the seabed within the area shown on the offshore works plan by one of monopile foundation, mono suction bucket foundation, jacket foundation, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations;
- (d) a network of cables;
- (e) up to six cable circuits between Work No. 2 and Work No. 3, and between Work No. 3 and Work No.5 consisting of offshore export cables along routes within the Order limits seaward of MLWS including one or more cable crossings; and
- (f) up to eight temporary horizontal directional drilling pits;

Work No. 3—

- (a) in the event that the mode of transmission is HVAC up to three offshore HVAC booster stations fixed to the seabed within the area shown on the offshore works plan by one of monopile foundation, mono suction bucket foundation, jacket foundation, , pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations; and
- (b) in the event that the mode of transmission is HVAC, up to six cable circuits between Work No. 2 and Work No. 3, and between Work No. 3 and Work No.5 consisting of

offshore export cables along routes within the Order limits seaward of MHWS including one or more cable crossings;

Work No. 4— a temporary work area associated with Work No.2 and Work No.3 for vessels to carry out anchoring and positioning alongside Work No.2 or Work No.3;

Work No. 5—works consisting of—

- (a) up to six cable circuits and associated electrical circuit ducts between Work No. 4 to Work No. 6;
- (b) and
- (c) up to eight horizontal directional drilling pits;

In the East Riding of Yorkshire

Work No. 6— onshore connection works consisting of—

- (a) up to six cable circuits and associated electrical circuit ducts to Work No. 7;
- (b) up to six transition joint bays;
- (c) onshore construction works;
- (d) up to 240 link boxes; and
- (e) up to 240 joint bays;

Work No. 7— onshore connection works consisting of—

- (a) an onshore HVDC/HVAC substation;
- (b) an energy balancing infrastructure with a gross storage capacity of over 50 megawatts; and
- (c) up to six cable circuits and electrical circuit ducts, and onshore construction works;

Work No. 8— onshore connection works consisting of up to four cable circuits and electrical circuit ducts between Work No. 7 and the Creyke Beck National Grid substation, including a connection above ground and electrical engineering works within or around the National Grid substation buildings and compound, and onshore construction works;

Work No. 9— temporary works as follows—

- (a) vehicular access tracks;
- (b) temporary works area to support the construction activities in Work No.7;
- (c) temporary logistics compounds to support the construction of Work Nos. 5, 6, 7, and 8.

Work No. 10— vehicular access tracks to serve Work No. 7. In connection with such Work Nos. 1 to 5 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as the placement of rock and/or concrete mattresses,;
- (c) the removal of material from the seabed required for the construction of Work Nos. 1 to 4 and the disposal within Work no.1 of up to 3,889,815 cubic metres of inert material of natural origin and within Work nos. 2, 3 and 4 up to 928,735 cubic metres of inert material of natural origin produced during construction drilling, seabed preparation for foundation works, cable installation preparation such as sandwave clearance, boulder clearance and pre-trenching and excavation of horizontal directional drilling exit pits; and
- (d) removal of static fishing equipment;

and in connection with such Work Nos. 5 to 10 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be

necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) ramps, means of access and footpaths;
- (b) bunds, embankments, swales, landscaping, fencing and boundary treatments;
- (c) habitat creation;
- (d) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable marker, tiles and tape, and lighting and other works associated with cable laying;
- (e) works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems and culverting;
- (f) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (g) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (h) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;
- (i) works for the benefit or protection of land affected by the authorised project;
- (j) working sites in connection with the construction of the authorised project, construction lay down areas and compounds, storage compounds and their restoration.

2. The grid coordinates for that part of the authorised project which is seaward of MHWS are specified below—

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1					
2					

PART 2

ANCILLARY WORKS

1. Works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development;
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- (c) temporary works for the benefit or protection of land or structures affected by the authorised development.

PART 3

REQUIREMENTS

Time limits

1. The authorised project must not be commenced after the expiration of seven years beginning with the date this Order comes into force.

Detailed offshore design parameters

2.—(1) The total number of wind turbine generators comprised in the authorised project must not exceed 180.

(2) Subject to sub-paragraph (3), each wind turbine generator forming part of the authorised project must not—

- (a) exceed a height of 370 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a rotor diameter of 305 metres;
- (c) be less than 35 metres from MSL to the lowest point of the rotating blade; and
- (d) be less than 810 metres from the nearest wind turbine generator in all directions.

(3) The minimum distance in sub-paragraph (2)(d) between each wind turbine generator is to be measured from lateral blade tip to blade tip with the rotor blades in a horizontal position.

(4) Wind turbine generator foundation structures forming part of the authorised scheme must be one of either monopile foundation, mono suction bucket foundation, or jacket foundation.

(5) No wind turbine generator—

- (a) jacket foundations employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than four metres; and
- (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.

(6) The total combined seabed footprint area for wind turbine generator foundations must not exceed—

- (a) 226,195 square metres excluding scour protection; and
- (b) 795,216 square metres including scour protection.

3.—(1) The total number of offshore electrical installations and offshore accommodation platforms shall not exceed ten, and shall consist of no more than—

- (a) six offshore type 1 transformer substations;
- (b) three offshore type 2 transformer substations;
- (c) three offshore HVAC booster stations;
- (d) three offshore HVDC converter stations; and
- (e) one offshore accommodation platform.

(2) The dimensions of any offshore type 1 transformer substations (excluding auxiliary structures) forming part of the authorised project must not exceed—

- (a) 90 metres in height when measured from LAT;
- (b) 90 metres in length; and
- (c) 90 metres in width.

(3) The dimensions of any offshore type 2 transformer substations (excluding auxiliary structures) forming part of the authorised project must not exceed—

- (a) 100 metres in height when measured from LAT;
- (b) 180 metres in length; and
- (c) 90 metres in width.

(4) The dimensions of any offshore HVAC booster station (excluding auxiliary structures) forming part of the authorised project must not exceed—

- (a) 90 metres in height when measured from LAT;
- (b) 90 metres in length; and
- (c) 90 metres in width.

(5) The dimensions of any offshore type 1 HVDC converter substations forming part of the authorised project must not exceed—

- (a) 90 metres in height when measured from LAT;
 - (b) 100 metres in length; and
 - (c) 100 metres in width.
- (6) The dimensions of any offshore type 2 HVDC converter substations forming part of the authorised project must not exceed—
- (a) 100 metres in height when measured from LAT;
 - (b) 180 metres in length; and
 - (c) 90 metres in width.
- (7) The dimensions of any offshore accommodation platform forming part of the authorised project must not exceed—
- (a) 64 metres in height when measured from LAT;
 - (b) 60 metres in length; and
 - (c) 60 metres in width.
- (8) Offshore accommodation platform foundation structures forming part of the authorised project must be one of either monopile foundations, mono suction bucket foundations, or jacket foundations.
- (9) Offshore electrical installation foundation structures forming part of the authorised scheme must be one of the following foundation options—
- (a) for offshore type 1 transformer substations and offshore HVAC booster stations either monopile foundations, mono suction bucket foundations, jacket foundations, ; and
 - (b) for offshore type 2 transformer substations and offshore HVDC converter stations either monopile foundations, mono suction bucket foundations, jacket foundations, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations.
- (10) No offshore installation or offshore accommodation platform—
- (a) jacket foundation employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than four metres; and
 - (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.
- (11) The total seabed footprint area for offshore accommodation platform foundations must not exceed—
- (a) 5,625 square metres excluding scour protection; and
 - (b) 30,625 square metres including scour protection.
- (12) The total seabed footprint area for offshore electrical installation foundations must not exceed—
- (a) 56,250 square metres excluding scour protection; and
 - (b) 250,000 square metres including scour protection.
- 4.** The total volume of scour protection for wind turbine generators, offshore accommodation platforms and offshore electrical installations shall not exceed 2,266,814 cubic metres.
- 5.—**(1) The number of cable circuits shall not exceed six.
- (2) The cables comprising Work No. 1(c) shall not—
- (a) exceed 600 kilometres in length; and
 - (b) be subject to cable protection with an area greater than 624,000 square metres.
- (3) The cables comprising Work No. 2(d) shall not—
- (a) exceed 90 kilometres in length; and
 - (b) be subject to cable protection with an area greater than 94,000 square metres.
- (4) The cables comprising Work No. 2(e) shall not—

- (a) exceed 654 kilometres in length; and
 - (b) be subject to cable protection with an area greater than 792,000 square metres.
- (5) The total number of the cable crossings must not exceed 55 unless otherwise agreed with the MMO.

Detailed design approval onshore

6.—(1) Construction of the connection works in either Work No. 7 shall not commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance and materials;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, parking and circulation areas;
- (g) minor structures, such as furniture, refuse or other storage units, signs and lighting; and
- (h) proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;

relating to that work of the authorised project have been submitted to and approved in writing by the relevant planning authority.

(2) The details submitted under sub-paragraph (1) must be in accordance with the limits of deviation set out in the onshore limits of deviation plan and substantially in accordance with the design vision statement.

(3) The connection works in Work No. 7 must be carried out in accordance with the approved details.

(4) The connection works in either Work No. 7 shall not commence until confirmation of the choice of HVDC or HVAC has been provided in writing to the relevant planning authority, either before, or at the same time as, the details referred to in paragraph (1).

Provision of landscaping

7.—(1) No part of the connection works may commence until a written landscape management plan and associated work programme (which accords with the outline landscape management plan and outline ecological management plan) for the connection works has been submitted to and approved by the relevant planning authority in consultation with the relevant SNCBs and the Historic Buildings and Monuments Commission for England.

(2) The landscape management plan must include details of—

- (a) surveys, assessments and method statements as guided by BS 5837 and the Hedgerows Regulations 1997; and
- (b) location, number, species, size and planting density of any proposed planting;
cultivation, importing of materials and other operations to ensure plant establishment;
and
- (c) implementation timetables for all landscaping works.

(3) The landscape management plan must be carried out as approved.

Implementation and maintenance of landscaping

8.—(1) All landscape works must be carried out in accordance with the landscape management plans approved under requirement 7 (provision of landscaping), and in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscape management plan that, within a period of five years after planting, is removed by the undertaker, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise approved in writing by the relevant planning authority.

Ecological management plan

9.—(1) No part of the connection works may commence until a written ecological management plan (which accords with the outline ecological management plan and the relevant recommendations of appropriate British Standards) for the connection works reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with the relevant SNCBs and (where works have potential to impact wetland habitats) the Environment Agency.

(2) The onshore site preparation works may not commence until a written ecological management plan (which accords with the outline ecological management plan) for those works reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with the relevant SNCBs; and

(3) The ecological management plan must include an implementation timetable and must be carried out as approved.

Highway accesses

10.—(1) Construction of any new permanent or temporary means of access to a highway, or alteration, or use of an existing means of access to a highway, shall not commence until an access plan for that access has been submitted to and approved by the relevant highway authority.

(2) The access plan must include details of the siting, design, layout, visibility splays, access management measures and a maintenance programme relevant to the access it relates to.

(3) The highway accesses (including visibility splays) must be constructed and maintained in accordance with the approved details.

Fencing and other means of enclosure

11.—(1) No part of the connection works may commence until details of all proposed permanent fences, walls or other means of enclosure of the connection works have been submitted to and approved by the relevant planning authority.

(2) Any temporary fences, walls or other means of enclosure must be provided in accordance with the outline code of construction practice.

(3) All construction sites must remain securely fenced in accordance with the code of construction practice at all times during construction of the connection works.

(4) Any temporary fencing must be removed on completion of the relevant section of the connection works.

(5) Any approved permanent fencing in relation to an onshore HVDC/HVAC substation must be completed before that onshore HVDC/HVAC substation is brought into use and maintained for the operational lifetime of the onshore HVDC/HVAC substation.

Surface and foul water drainage

12.—(1) No part of the connection works shall be constructed until written details of the surface and (if any) foul water drainage system (including means of pollution control) for the construction of that part of the connection works have, after consultation with the relevant sewerage and drainage authorities and the Environment Agency, been submitted to and approved by the lead local flood authority.

(2) No part of the connection works shall commence operation until written details of the surface and (if any) foul water drainage system (including means of pollution control) for the connection works have, after consultation with the relevant sewerage and drainage authorities and the Environment Agency, been submitted to and approved by the lead local flood authority.

(3) The surface and foul water drainage system must be constructed and maintained in accordance with the approved details.

Contaminated land and groundwater scheme

13.—(1) No part of the connection works may be commenced until a scheme to deal with the contamination of any land (including groundwater) within the Order limits that is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to, and approved by, the relevant planning authority in consultation with the Environment Agency and, to the extent that the plan relates to the intertidal area, the MMO.

(2) The scheme must include an investigation and assessment report, to identify the extent of any contamination and the remedial measures to be taken for that stage to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Such remediation as may be identified in the approved scheme must be carried out in accordance with the approved scheme.

Surface water

14.—(1) No part of the onshore HVDC/HVAC substation shall commence until, in respect of that installation, a detailed surface water scheme has been prepared in consultation with the Environment Agency and submitted to and approved in writing by the relevant planning authority.

(2) The detailed surface water schemes must accord with the outline onshore infrastructure drainage strategy and—

- (a) be based on sustainable drainage principles;
- (b) an assessment of the hydrological and hydrogeological context of the onshore HVDC/HVAC substation, as applicable; and
- (c) include detailed designs of a surface water drainage scheme.

(3) Construction of the onshore HVDC/HVAC substation or HVAC booster station as applicable must be carried out in accordance with the approved scheme.

Onshore Archaeology

15.—(1) No part of the connection works may commence until a written scheme of archaeological investigation (which must accord with the outline onshore written scheme of investigation) for the connection works has been submitted to and approved by the relevant planning authority in consultation with the Historic Buildings and Monuments Commission for England.

(2) The term commence as used in requirement 15(1) shall include any onshore site preparation works.

(3) Any archaeological investigations must be carried out in accordance with the approved scheme.

(4) The archaeological site investigations and post investigation assessment must be completed in accordance with the programme set out in the written scheme of archaeological investigation and provision made for analysis, publication and dissemination of results and archive deposition.

Code of construction practice

16.—(1) No part of the connection works may commence until a code of construction practice (which must accord with the outline code of construction practice) for the connection works has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency, the relevant SNCBs and, if applicable, the MMO.

(2) The term commence as used in requirement 16(1) shall include any onshore site preparation works.

(3) All construction works must be undertaken in accordance with the relevant approved code of construction practice.

Construction traffic and travel management plan

17.—(1) No part of the connection works may commence until written details of a construction traffic and travel management plan (which accords with the outline construction traffic and travel management plan) for the connection works has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

(2) The term commence as used in requirement 17(1) shall include any onshore site preparation works.

(3) The construction traffic and travel management plan must be implemented as approved.

European protected species onshore

18.—(1) No part of the connection works may commence until final pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by the connection works or in any of the trees to be lopped or felled as part of the connection works.

(2) Where a European protected species is shown to be present, the relevant part(s) of the connection works must not begin until, after consultation with the relevant SNCBs and the relevant planning authority, a scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority or a European protected species licence granted by Natural England.

(3) The connection works must be carried out in accordance with the approved scheme.

(4) In this Requirement, “European Protected Species” has the same meaning as in regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017(a).

Restoration of land used temporarily for construction

19. Any land landward of MLWS within the Order limits which is used temporarily for construction of the connection works and not ultimately incorporated in permanent works or approved landscaping, must be reinstated in accordance with such details as the relevant planning authority in consultation with, where appropriate, the MMO, and the relevant highway authority, may approve, as soon as reasonably practicable and in any event within twelve months of completion of the connection works.

Control of noise during operational phase

20.—(1) Prior to commencement of licensed activities landward of MHWS, a noise management plan (NMP) for Work No. 7 shall be submitted to and approved by the relevant planning authority.

(2) The NMP must set out the particulars of—

(a) S.I. 2010/490

- (a) any necessary noise attenuation and mitigation measures to be taken to minimise noise resulting from Work No. 7, including any noise limits; and
 - (b) a scheme for monitoring attenuation and mitigation measures provided under subparagraph (a) which must include—
 - (i) the circumstances under which noise will be monitored;
 - (ii) the locations at which noise will be monitored;
 - (iii) the method of noise measurement (which must be in accord with BS 4142:2014+A1:2019, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances); and
 - (iv) a complaints procedure.
- (3) The NMP must be implemented as approved.

Onshore decommissioning

21.—(1) Within three months of the cessation of commercial operation of the connection works an onshore decommissioning plan must be submitted to the relevant planning authority for approval unless otherwise agreed in writing by the relevant planning authority.

(2) The relevant planning authority must provide its decision on the onshore decommissioning plan required under requirement 21(1) within three months of submission of such plan unless otherwise agreed in writing by the relevant planning authority and the undertaker.

(3) The decommissioning plan must be implemented as approved unless otherwise agreed in writing by the relevant planning authority.

Requirement for written approval

22. Where the approval, agreement or confirmation of the Secretary of State, relevant planning authority or another person is required under a Requirement, that approval, agreement or confirmation must be given in writing.

Amendments to approved details

23.—(1) With respect to any requirement which requires the authorised project to be carried out in accordance with the details approved by the relevant planning authority or another person, the approved details must be carried out as approved unless an amendment or variation is previously agreed in writing by the relevant planning authority or that other person in accordance with subparagraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or that other person that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other person.

SCHEDULE 2
STREETS SUBJECT TO STREET WORKS

<i>(1) Street subject to street works</i>	<i>(2) Extent of works</i>

SCHEDULE 3
STREETS TO BE TEMPORARILY STOPPED UP

<i>(1) Area</i>	<i>(2) Public rights of way to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up</i>

SCHEDULE 4

PART 1 PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

(1) Public right of way to be temporarily stopped (2)Extent of temporary stopping up

Barmston Footpath No. 4

Barmston Footpath No. 3

Barmston Footpath No. 2

Foston on the Wolds Footpath No. 10

Foston on the Wolds Footpath No. 12

Foston on the Wolds Bridleway No. 6

Leconfield Footpath No. 1

Leconfield Bridleway No. 2

Leconfield Footpath No. 7

Leconfield Footpath No. 10

Leconfield Footpath No. 11

Leconfield Bridleway No. 12

PART 2

PUBLIC RIGHTS OF WAY TO BE DIVERTED(1)	(2)Extent of temporary diversion	(3) Extent of substitute right of way
Public right of way to be diverted		

Skidby Footpath No.16

SCHEDULE 5
ACCESS TO WORKS

<i>(1) Location of access</i>	<i>(2) Description of access</i>

SCHEDULE 6

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1) Number of land shown on land plans</i>	<i>(2) Purpose for which rights may be acquired</i>

SCHEDULE 7

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken from” there is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 7 of Schedule 7 to the Hornsea Four Offshore Wind Farm Order 202[]; and
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 7 to the Hornsea Four Wind Farm Order 202[]) to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right”

Application of Part 1 of the 1965 Act

4.—(1) The 1965 Act is to have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or,

(a) 1973 c.26.

in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

5. For section 7 of the 1965 Act (measure of compensation in the case of severance) there is substituted the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 19), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) as modified by article 27(3) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

10. For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Hornsea Four Offshore Wind Farm Order 202[] in respect of the land to which the notice to treat relates.

(2) But see article 23(3) (acquisition of subsoil only) of the Hornsea Four Offshore Wind Farm Order 202[] which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 9

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the affected undertakers referred to in this part of this Schedule (save for National Grid which is protected by Part 2 of this Schedule, [] which is protected by Part [] of this Schedule and [] which is protected by Part [] of this Schedule) the following provisions must, unless otherwise agreed in writing between the undertaker and the affected undertaking concerned, have effect.

2. In this part of this Schedule—

“affected undertaker” means

- (a) any licence holder within the meaning of Part 1 of the 1989 Act;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (c) a water undertaker within the meaning of the Water Industry Act 1991(b);
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991(c), for the area of the authorised development but, for the avoidance of doubt, does not include the undertakers specified in Part [] of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and

(a) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(b) 1991 c.56.

(c) 1991 c.56.

- (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties; and

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 of the 1991 Act.

No acquisition etc. except by agreement

4. Regardless of any provision in this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of an affected undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5 that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5, the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable

subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 37 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (2)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Expenses and costs

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

2. In this part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act**(a)**;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

3. The exercise of the powers of article 28 (statutory undertakers) are subject to part 10 of Schedule 3A to the Communications Act 2003**(b)**.

4.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

(a) See section 106.

(b) 2003 c.21.

- (i) make reasonable compensation to an operator for loss sustained by it; and
- (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 37 (arbitration).

5. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

6. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

1. For the protection of National Grid referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the National Grid to enable the National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid; and
- (b) any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use

and maintenance of the authorised development and construction of any works authorised by this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means either—

- (a) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; or
- (b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH,

or their successor company(ies);

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7 or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7 or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

3. Except for paragraphs 4 (apparatus of National Grid in streets subject to temporary stopping up), 9 (retained apparatus: protection of National Grid as gas undertaker), 10 (retained apparatus: protection of National Grid as electricity undertaker), 11 (expenses) and 12 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary stopping up

4.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 10 (temporary stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to the

National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up under the powers of article 10 (temporary stopping up of streets), National Grid will be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid which will not unreasonably be withheld and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity and/or gas, as the case may be, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(3) Any agreement or consent granted by National Grid under paragraphs 9 or 10 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under subparagraph 6(1).

Removal of apparatus

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any Order land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works compromised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures National Grid facilities and rights in land for the construction, use, maintenance and protection in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration under paragraph 16 (arbitration) and the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2) article 37 (arbitration) of the Order shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) intended maintenance regimes;

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to a work to which sub-paragraphs (1) and (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (1) and (2) or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either by themselves or by the undertaker by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works comprising the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Retained apparatus: Protection of National Grid as Electricity Undertaker

10.—(1) Not less than 56 days before the commencement of any authorised development that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise and to which paragraph 7(2)(a) or 7(2)(b) applies, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within—

- (a) 15 metres measured in any direction of any apparatus, or
- (b) involve embankment works within 15 metres of any apparatus,

the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (c) the exact position of the works;
- (d) the level at which these are proposed to be constructed or renewed;
- (e) the manner of their construction or renewal including details of excavation, positioning of plant;
- (f) the position of all apparatus;
- (g) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (h) any intended maintenance regimes; and
- (i) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must in addition to the matters set out in sub-paragraph (2) include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by the National Grid's engineers.
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic

(4) The undertaker must not commence any works to which sub-paragraph (1), (2), or (3) applies until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (1), (2), or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraph (1), (2), or (3) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), (3) or (6) as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1),(2), (3)or (6) (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3)and (6) to (7) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any work, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines ENA TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

11.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 7(3);
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;

- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement settled by arbitration in accordance with article 37 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purpose of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and

- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 5(b) (benefit of the Order) of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-paragraph 12(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 12 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

Enactments and agreements

13. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and National Grid, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

14.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or an National Grid makes requirements for the protection or alteration of apparatus under paragraphs 9 and/or 10, National Grid shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

Access

15. If in consequence of the agreement reached in accordance with paragraph 6 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Save for differences or disputes arising under paragraphs 7(2), 7(4), 8(1), 9 and 10 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 37 (arbitration).

Notices

17. The plans submitted to National Grid by the undertaker pursuant to paragraphs 9(1) and 10(1) must be sent to National Grid Plant Protection at **plantprotection@nationalgrid.com** or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

1. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 any other person on whom rights or obligations are conferred by that paragraph.

2. In this part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(a) 1993 c.43

(b) 2006 c.46.

- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised project as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and for the avoidance of doubt includes the exercise of the powers conferred by article 4 (powers to maintain authorised project), article 12 (access to works), article 15 (discharge of water), article 17 (authority to survey and investigate the land onshore); article 34 (felling or lopping of trees and removal of hedgerows) and article 35 (trees subject to tree preservation orders) in respect of any railway property.

3.—(1) Where under this Part Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised project pursuant to this Order.

4.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 37 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the opinion of the engineer should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using them (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified work), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer’s reasonable satisfaction.

5.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 4(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 4;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph 5(1)(a), make good such damage and pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

6. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

7. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

8.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 4(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 9(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

9. The undertaker must pay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 4(3) or in constructing any protective works under paragraph 4(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, need to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

10.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised project where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised project) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that the EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 4(1) for the relevant part of the authorised project giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised project take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 4(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can reasonably be prevented only by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but Network Rail may, in its reasonable discretion select the means of prevention and the method of their execution, and in relation to such modifications paragraph 4(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of the commercial operation of the authorised project and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised project causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of the EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker's apparatus causing the EMI until all measures necessary have been taken to remedy the EMI by way of modification to the source of the EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of the EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of the EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or the EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 5.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 14(1) applies, subject to paragraphs 14(2) to 14(8), to the costs and expenses reasonably incurred or losses reasonably suffered by Network Rail through the implementation of the provisions of this paragraph (including costs reasonably incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 9(a) any modifications to Network Rail's apparatus under this paragraph is deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 37 (arbitration) to the Secretary of State shall be read as a reference to the Institution of Engineering and Technology for appointment of an arbitrator.

11. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

12. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

13. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work, provided that at least 56 days' prior notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, are to be paid by the undertaker to Network Rail.

14.—(1) The undertaker must—

- (a) pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part (but subject to the provisions of this paragraph) which may be occasioned to or reasonably incurred by Network Rail by reason of—
 - (i) the construction or maintenance of a specified work or the failure of such a work; or
 - (ii) any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,
- (b) indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.

(2) the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) Network Rail must give the undertaker reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(4) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under that sub-paragraph include a sum equivalent to the relevant costs in circumstances where—

- (a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and
- (b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (5).

(7) Network Rail must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 14 applies. If requested to do so by the undertaker, Network Rail shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 14 for claims reasonably incurred by Network Rail.

(8) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

15. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other

liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs mentioned in paragraph 14) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part (including any claim relating to those relevant costs).

16. In the assessment of any sums payable to Network Rail under this Part no account must be taken of any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

17. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the onshore works plans and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

18. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

19. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 5 (benefit of the Order) of this Order in relation to land within 15m of Network Rail's operational railway and any such notice must be given no later than 14 days before any such application is made and must describe or give (as appropriate)—

- (a) whether the application is for consent pursuant to article 5(a) or 5(b);
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made

20. In relation to any dispute arising under this Part that is referred to arbitration in accordance with article 37 (arbitration) of the Order, the undertaker will agree to any reasonable extension of time requested by Network Rail pursuant to paragraph 5(3) of Schedule 13 where Network Rail can demonstrate that it is unable (acting reasonably) to comply with the time limit due to timing constraints that may arise for Network Rail in obtaining clearance conditions and/or any engineering regulatory or stakeholder (internal or external) consents and/or assessing any matters of concern with regards to the safe operation of the railway.

21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 36 (certification of plans and documents etc) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format reasonably specified by Network Rail.

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY AND DRAINAGE AUTHORITIES

1. The provisions of this Part have effect for the protection of a drainage authority unless otherwise agreed in writing between undertaker and the drainage authority.

2. In this Part—

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” must be construed accordingly;

“drainage authority” means—

- (a) in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991; and
- (b) in relation to a main river or any sea defence work, the Environment Agency;

“drainage work” means any watercourse includes any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring;

“ordinary watercourse” has the meaning given in the Land Drainage Act 1991(a);

“plans” includes sections, drawings, specifications and method statements; and

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity, or quality of water in any watercourse; or
- (c) affect the conservation, distribution or use of water resources.

3.—(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 3.

(3) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or submission of further particulars if required by the drainage authority under sub-paragraph (1)) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work or, where the drainage authority is the Environment Agency, for the protection of water resources for the prevention of pollution or in the discharge of its environmental duties.
- (d) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph 3(3)(b).

4. Without limiting paragraph 3, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

(a) See section 72(1).

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 4, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice, and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

6.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of any specified work maintain in good repair and condition and free from obstruction any drainage work that is situated within the limits of deviation on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work that the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works that are vested in the drainage authority or that the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part.

7. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

8. The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans under this Part;
- (b) in inspecting the construction of any specified work or any protective works required by the drainage authority under this Part; and
- (c) in carrying out of any surveys or tests by the drainage authority that are reasonably required in connection with the construction of the specified work.

9.—(1) Without limiting the other provisions of this Part, the undertaker must indemnify the drainage authority in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such land; and
- (d) where the drainage authority is the Environment Agency, inadequate water quality in any watercourse or other surface waters or in any groundwater,

that is caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

10. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

11. Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 37 (arbitration), but otherwise must be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Business, Energy and Industrial Strategy acting jointly on a reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.

SCHEDULE 10

PART 1
REMOVAL OF HEDGEROWS

<i>(1) Area</i>	<i>(2) Location of hedgerow</i>

PART 2
REMOVAL OF IMPORTANT HEDGEROWS

<i>(1) Area</i>	<i>(2) Reference of hedgerow</i>

SCHEDULE 11
DEEMED MARINE LICENCE UNDER THE 2009 ACT—
GENERATION ASSETS

PART 1
LICENSED MARINE ACTIVITIES

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“2017 Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017;

“Annex I reef” means a reef of a type listed in Annex I of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;

“array cable” means the network of offshore subsea cables connecting the wind turbine generators in Work No.1 and the offshore substations in Work No.2;

“authorised deposits” means the substances and articles specified in paragraph 4 of Part 1 of this licence;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 of the Order;

“authorised project” means Work No. 1 described in paragraph 3 of Part 1 this licence or any part of that work;

“buoy” means any floating device used for navigational purposes or measurement purposes;

“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, and/or rock placement (but not material used for cable crossings);

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for pre-construction monitoring surveys approved under this licence and “commenced” and “commencement” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order;

“European site” has the meaning given in regulation 27 of the 2017 Regulations;

“jacket foundation” means a lattice type structure constructed of steel, which may include scour protection and additional equipment such as, J-tubes, corrosion protection systems and access platforms;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“layout principles” means the document certified as the layout principles by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc);

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace, to the extent assessed in the environmental statement; and

“maintenance” must be construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“monopile foundation” means a steel pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“MSL” means mean sea level;

“offshore accommodation platform” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the wind turbine generators;

“offshore HVAC booster station” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

- (a) electrical equipment required to provide reactive power compensation; and
- (b) housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the substation;

“offshore transformer substation” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage and provide reactive power compensation; and
- (b) housing accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“offshore type 1 transformer substation” means the smaller version of the offshore transformer substations assessed in the environment statement;

“offshore type 2 transformer substation” means the larger version of the offshore transformer substations assessed in the environment statement;

“Order” means the Hornsea Four Offshore Wind Farm Order 202[];

“the offshore Order limits and grid coordinates plan” means the plan certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc);

“outline marine mammal mitigation protocol” means the document certified as the outline marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“outline marine written scheme of investigation” means the document certified as the outline offshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);” means the document certified as the outline offshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure jacket foundations;

“statutory historic body” means the Historic Buildings and Monuments Commission for England or its successor in function;

“suction bucket” means a steel cylindrical structure attached to the legs of a jacket foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“mono suction bucket foundation” means a steel cylindrical structure which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential, and may include scour protection and additional equipment such as J-tubes;

“offshore works plan” means the plan certified as the offshore works plan by the Secretary of State for the purposes of the Order.

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means Orsted Hornsea Project Four Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation or transition piece;

“Work No.2” means—

- (c) up to six offshore type 1 transformer substations each fixed to the seabed by one of monopile foundation, mono suction bucket foundation, or jacket foundation, and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge;
- (d) up to three offshore type 2 transformer substations each fixed to the seabed by one of monopile foundations, mono suction bucket foundations or jacket foundations, , pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations, and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge;
- (e) in the event that the mode of transmission is HVDC, up to three HVDC converter substations fixed to the seabed within the area shown on the offshore works plan by one of monopile foundation, mono suction bucket foundation, jacket foundation, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations;
- (f) a network of cables;
- (g) up to six cable circuits between Work No. 2 and Work No. 3, and between Work No. 3 and Work No.5 consisting of offshore export cables along routes within the Order limits seaward of MLWS including one or more cable crossings; and
- (h) up to eight temporary horizontal directional drilling exit pits;

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

- (a) Marine Management Organisation
Marine Licensing Team
Lancaster House Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;
- (b) Marine Management Organisation (local office)
[]
- (c) Trinity House
Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;
- (d) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;
- (e) Maritime and Coastguard Agency
Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2433;
- (f) Natural England
4th Floor
Foss House
1-2 Peasholme Green
York
YO1 7PX
Tel: 0300 060 4911;
- (g) Historic England
Brooklands
24 Brooklands Avenue
Cambridge
CB2 8BU

Details of licensed marine activities

2. Subject to the licence conditions at Part 4, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea within the Order limits seaward of MHWS of the substances and articles specified in paragraph 4 below and within Work no.1 of up to 3,889,815 cubic metres of inert material of natural origin produced during construction drilling or seabed preparation for foundation works and cable sandwave preparation works within Work No. 1;
- (b) the construction of works in or over the sea and/or on or under the seabed;
- (c) dredging for the purposes of seabed preparation for foundation works and/or electrical circuit works;
- (d) [the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation];
- (e) boulder clearance works by displacement ploughing or subsea grab technique or any other equivalent method;
- (f) removal of static fishing equipment; and
- (g) site preparation works.

3. Such activities described in paragraph 2 are authorised in relation to the construction, maintenance and operation of—

Work No. 1—

- (a) an offshore wind turbine generating station with a gross electrical output of over 100 megawatts comprising up to 180 wind turbine generators, each fixed to the seabed by one of monopile foundation, mono suction bucket foundation, or jacket foundation;
- (b) one offshore accommodation platform fixed to the seabed within the area shown on the offshore works plan by one of monopile foundation, mono suction bucket foundation, jacket foundation, and which may be connected to each other or one of the offshore substations within Work No. 2 by an unsupported bridge; and
- (c) a network of cables between the wind turbine generators, and between the wind turbine generators and Work No. 2, including one or more cable crossings;

In connection with such Work No. 1 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as the placement of rock and/or concrete mattresses; and
- (c) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling or seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

5. The grid coordinates for that part of the authorised development comprising Work No. 1 are specified below and more particularly on the offshore Order limits and grid coordinates plan—

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
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General provisions

6. This licence remains in force until the authorised project has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of sections 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 5 (benefit of the Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the MMO that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Arbitration

10.—(1) Any difference under any provision of this licence, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 13 of the Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Where the referral to arbitration under paragraph (1) relates to a difference with the Secretary of State, in the event that the parties cannot agree upon a single arbitrator within the specified time period stipulated in paragraph (1), either party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

(3) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

PART 2

CONDITIONS

Design parameters

1.—(1) The total number of wind turbine generators comprised in the authorised project must not exceed 180.

(2) Subject to paragraph (3), each wind turbine generator forming part of the authorised project must not—

- (a) exceed a height of 370 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a rotor diameter of 305 metres;

- (c) be less than 35 metres from MSL to the lowest point of the rotating blade; and
 - (d) be less than 810 metres from the nearest wind turbine generator in all directions.
- (3) The minimum distance in sub-paragraph 2(2)(d) between each wind turbine generator is to be measured from lateral blade tip to blade tip with the rotor blades in a horizontal position.
- (4) Wind turbine generator foundation structures forming part of the authorised scheme must be one of the following foundation options: monopile foundation, mono suction bucket foundation, or jacket foundation.
- (5) No wind turbine generator—
- (a) jacket foundation employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than four metres; and
 - (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.
- (6) The total seabed footprint area for wind turbine generator foundations must not exceed—
- (a) 226,195 square metres excluding scour protection; and
 - (b) 795,216 square metres including scour protection.
- (7) The total volume of scour protection material for wind turbine generator foundations must not exceed 763,407 square metres.
- 2.—**(1) The total number of offshore accommodation platforms forming part of the authorised project must not exceed one.
- (2) The dimensions of any offshore accommodation platform forming part of the authorised project must not exceed—
- (a) 64 metres in height when measured from LAT;
 - (b) 60 metres in length; and
 - (c) 60 metres in width.
- (3) Offshore accommodation platform foundation structures forming part of the authorised project must be one of either monopile foundations, mono suction bucket foundations, or jacket foundations.
- (4) No offshore accommodation platform—
- (a) jacket foundation employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than four metres; and
 - (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.
- (5) The total seabed footprint area for offshore accommodation platform foundations must not exceed—
- (a) 118,125 square metres excluding scour protection; and
 - (b) 345,000 square metres including scour protection.
- (6) The area of scour protection material for offshore accommodation platform foundations must not exceed 30,625 square metres.

Maintenance of the authorised development

- 3.—**(1) The undertaker may at any time maintain the authorised development, except to the extent that this licence or an agreement made under this licence provides otherwise.
- (2) No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.
- (3) Maintenance works include but are not limited to—
- (a) major wind turbine component or offshore accommodation platform replacement;
 - (b) painting wind turbine generators or offshore accommodation platforms;

- (c) bird waste removal and marine growth;
- (d) cable remedial burial;
- (e) cable repairs;
- (f) access ladder replacement;
- (g) wind turbine generator anode replacement; and
- (h) J-tube repair/replacement.

(4) Where the MMO's approval is required under paragraph (2), approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Vessels under the undertaker's control

4.—(1) The undertaker shall issue to operators of vessels under its control operating within the Order limits a code of conduct to prevent collision risk or injury to marine mammals.

(2) The undertaker shall ensure appropriate co-ordination of vessels within its control operating within the Order limits so as to reduce collision risk to other vessels including advisory safe passing distances for vessels.

Extension of time periods

5. Any time period given in this licence given to either the undertaker or the MMO may be extended with the agreement of the other party.

Notifications and inspections

6.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 15; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 15;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 15 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised project.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities and within five days of the completion of the licenced activity.

(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised project or relevant part—

- (a) at least fourteen days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) on completion of construction of all offshore activities.

Confirmation of notification must be provided to the MMO within five days.

(8) A notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 1 and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 12(1)(b). Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO.

(11) In case of damage to, or destruction or decay of, the authorised project seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, the Kingfisher Information Service of Seafish and the UK Hydrographic Office. In case of the development of a cable exposure the undertaker must notify the MMO and the Kingfisher Information Service within three working days following the undertaker becoming aware of it.

Aids to navigation

7.—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised project seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised project to completion of decommissioning of the authorised project seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised project seaward of MHWS including the following—

- (a) notice of commencement of construction of the authorised project within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised project.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to condition 12(1)(j) using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised project seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of condition 6(11) are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

8.—(1) The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must ensure that the wind turbine generators are painted light grey (colour code RAL 7035).

Aviation safety

9.—(1) The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by Air Navigation Order 2016^(a) and determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority

(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, and the MMO, at least 14 days prior to the commencement of the authorised project, in writing of the following information—

- (a) the date of the commencement of construction of the authorised project;
- (b) the date any wind turbine generators are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any wind turbine generator and offshore accommodation platform to be constructed;
- (e) the latitude and longitude of each wind turbine generator and offshore accommodation platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised project. Copies of notifications must be provided to the MMO.

Chemicals, drilling and debris

10.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised project must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002.

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within the Order limits seaward of MHWS.

(6) The undertaker must ensure that any rock material used in the construction of the authorised project is from a recognised source, free from contaminants and containing minimal fines.

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(7) In the event that any rock material used in the construction of the authorised project is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under condition 12(1)(d)(i).

(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

11.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

12.—(1) The licensed activities for each phase of the project as agreed with the MMO must not commence until the following (insofar as relevant to that activity or phase of activity) has been submitted to and approved in writing by the MMO, in consultation with, where relevant, Trinity House and the MCA—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, which shows in accordance with the layout principles—
 - (i) the proposed location, including grid co-ordinates of the centre point of the proposed location for each wind turbine generator and offshore accommodation platform, subject to any micro-siting required due to anthropological constraints, environmental constraints or difficult ground conditions and choice of foundation types for all wind turbine generators and offshore accommodation platforms;
 - (ii) the number, specifications and dimensions of the wind turbine generators to be installed;
 - (iii) the length and arrangement of cable comprising Work No. 1(c);
 - (iv) the dimensions of all monopile foundations, mono suction bucket foundations, jacket foundations or gravity base foundations; and
 - (v) any exclusion zones/micrositing requirements identified in any mitigation project pursuant to sub-paragraph 12(2)(d) [or relating to any Annex I reefs identified as part of surveys undertaken in accordance with condition 16];to ensure conformity with the description of Work No. 1 and compliance with conditions 1 and 2 above.
- (b) a construction programme to include details of—
 - (i) the proposed construction start date;

- (ii) proposed timings for mobilisation of plant delivery of materials and installation works; and
 - (iii) an indicative written construction programme for all wind turbine generators offshore accommodation platforms and cable comprised in the works at paragraph 1 to 3(b) of Part 1 (licenced marine activities) of this Schedule (insofar as not shown in paragraph (ii) above);
- unless otherwise agreed in writing with the MMO.
- (c) a construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
 - (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation and cable installation works and having regard to any mitigation scheme pursuant to subparagraph 12(1)(f);
 - (ii) advisory safe passing distances for vessels around construction sites;
 - (iii) cable installation;
 - (iv) contractors;
 - (v) vessels and vessels transit corridors;
 - (vi) codes of conduct for vessel operators;
 - (vii) associated ancillary works;
 - (viii) guard vessels to be employed; and
 - (ix) details of means to address impacts on European sites.
 - (d) a project environmental management and monitoring plan covering the period of construction and operation to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised project in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) a marine biosecurity plan detailing how the risk of introduction and spread of invasive non-native species will be minimised;
 - (iv) waste management and disposal arrangements;
 - (v) a vessel management plan, to determine vessel routing to and from construction sites and ports, to include a code of conduct for vessel operators;
 - (vi) the appointment and responsibilities of a company fisheries liaison officer; and
 - (vii) all spatial data for archaeological exclusion zones and application of a protocol for archaeological discoveries.
 - (e) a scour protection management plan providing details of the need, type, sources, quantity and installation methods for scour protection, which must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.
 - (f) proposed pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 16, 17 and 18.
 - (g) in the event that driven or part-driven pile foundations are proposed to be used, a piling marine mammal mitigation protocol, in accordance with the outline marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, including details of soft start procedures with specified duration periods following current best practice as advised by the relevant statutory nature conservation bodies.
 - (h) a cable specification and installation plan, to include—

- (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA) to be taken to ensure existing and future safe navigation is not compromised or similar such assessment to ascertain suitable burial depths and cable laying techniques, including cable protection
 - (iii) proposals for the volume and areas of cable protection to be used for each cable crossing; and
 - (iv) proposals for monitoring offshore cables including cable protection during the operational lifetime of the authorised project which includes a risk based approach to the management of unburied or shallow buried cables.
- (i) an offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.
 - (j) an aid to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of condition 7 for the lifetime of the authorised project.
 - (k) In the event that driven or part-driven pile foundations are proposed to be used, the licenced activities, or any phase of those activities must not commence until a site integrity plan has been submitted to the MMO and the MMO is satisfied that the plan provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2017 Regulations) of a relevant site, to the extent that harbour porpoise are a protected feature of that site.

(l)

(2) The licensed activities or any part of those activities must not commence unless no later than six months prior to the commencement a marine written scheme of archaeological investigation has been submitted to and approved by the MMO, in accordance with the outline marine written scheme of investigation, and in accordance with industry good practice, in consultation with the statutory historic body to include—

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
- (c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within six months of any survey being completed;
- (d) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones prior to construction;
- (e) monitoring of archaeological exclusion zones during and post construction, including provision of a report on such monitoring;
- (f) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS ('Online AccesS to the Index of archaeological investigationS') form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
- (g) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme;

- (h) implementation of the Offshore Renewables Protocol for Reporting Archaeological Discoveries as set out by The Crown Estate; and
- (i) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.

(3) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific outline written scheme of investigation (which must accord with the details set out in the outline marine written scheme of investigation) which has been submitted to and approved by the MMO.

(4) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed 5,000kJ.

13.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 12 (save for that required under condition 12(1)(f)) must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) The pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting required under condition 12(1)(f) must be submitted in accordance with the following, unless otherwise agreed in writing with the MMO—

- (a) at least four months prior to the first survey, detail of any pre-construction surveys and an outline of all proposed monitoring;
- (b) at least four months prior to construction, detail on construction monitoring; and
- (c) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;

(3) The design plan required by condition 13(1)(a) shall be prepared by the undertaker and determined by the MMO in accordance with the layout principles.

(4) The MMO shall determine an application for approval made under condition 12 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(5) Where the MMO is minded to refuse an application for approval made under condition 12 and notifies the undertaker accordingly, or the MMO fails to determine the application for approval under condition 12 within the period prescribed in sub-paragraph (3), the undertaker may refer the matter for determination in accordance with article 37 (arbitration) OR article 38 (requirements, appeals, etc.) of the Order.

(6) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 12, unless otherwise agreed in writing by the MMO.

Offshore safety management

14. No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency response and co-operation for the construction, with provision for update prior to the commencement of each of the operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” (or any equivalent guidance that replaces or supersedes it), and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

Reporting of engaged agents, contractors and vessels

15.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Pre-construction monitoring and surveys

16.—(1) The undertaker must in discharging condition 12(1)(f) submit a monitoring plan or plans in accordance with an in-principle monitoring plan for written approval by the MMO in consultation with the relevant statutory bodies, which shall contain details of proposed surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report and;

- (a) the survey proposals must be in general accordance with the principles set out in the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the preconstruction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, the pre-construction survey proposals must comprise, in outline—

- (a) a high-resolution swath bathymetric survey to include a 100% coverage and a side-scan sonar survey of the parts of the offshore Order limits within which it is proposed to carry out construction works and disposal activities under this licence, to—
 - (i) determine the location, extent and composition of any biogenic or geogenic reef features, as set out within the in-principle monitoring plan;
 - (ii) inform future navigation risk assessments as part of the cable specification and installation plan; and
 - (iii) inform the identification of any archaeological exclusion zone and post consent monitoring of any such archaeological exclusion zone;

(3) The undertaker must carry out the surveys specified within the monitoring plan or plans in accordance with that plan or plans, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation body.

Construction monitoring

17.—(1) The undertaker must in discharging condition 12(1)(f) submit a construction monitoring plan or plans for written approval by the MMO in consultation with the relevant statutory nature conservation body, which shall include details of any proposed construction monitoring, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in general accordance with the principles set out in the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition the construction monitoring plan must include, in outline—

- (a) where piled foundations are to be employed, unless otherwise agreed by the MMO in writing, details of proposed monitoring of the noise generated by the installation of the first four monopile foundations to be constructed under this licence;
- (b) details of vessel traffic monitoring by automatic identification system for the duration of the construction period including obligations to report annually to the MMO and the MCA during the construction phase of the authorised development; and
- (c) vessel traffic monitoring by automatic identification system for the duration of the construction period, including annual reporting to the MMO and MCA;

(3) The results of the initial noise measurements generated in accordance with condition 17(2)(a) must be provided to the MMO within 6 weeks of the completion of installation of the fourth foundation of each foundation type for the MMO to determine whether any further noise monitoring shall be required.

(4) The undertaker must carry out the surveys specified within the construction monitoring plan or plans in accordance with that plan or plans, including any further noise monitoring required in writing by the MMO under condition 17(3), unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation body.

Post-construction monitoring

18.—(1) The undertaker must in discharging condition 12(1)(f) submit a post-construction monitoring plan or plans for written approval by the MMO in consultation with the relevant statutory nature conservation body including details of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in general accordance with the principles set out in the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the preconstruction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) Subject to receipt of specific proposals the post-construction survey plan or plans must include, in outline, a bathymetric survey to monitor the effectiveness of archaeological exclusion zones identified to have been potentially impacted by construction works. The data shall be analysed by an accredited archaeologist as defined in the offshore written scheme of investigation required under condition 12(2).

(3) The undertaker must carry out the surveys agreed under condition 18(1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation body.

Timing of monitoring report

19. Any monitoring report compiled in accordance with the monitoring plans provided under conditions 16, 17 and 18 must be provided to the MMO no later than four months following completion of the monitoring to which it relates, unless otherwise agreed with the MMO.

Reporting of impact pile driving

20.—(1) Only when driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—

- (a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements;

- (b) at six month intervals following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements;
 - (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements
- (2) The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within 7 days of the submission.
- (3) For the purpose of this condition—
- (a) “Marine Noise Registry” means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;
 - (b) “Forward Look” and “Close Out” requirements are as set out in the UK Marine Noise Registry Information.

SCHEDULE 12
DEEMED MARINE LICENCE UNDER THE 2009 ACT –
TRANSMISSION ASSETS

PART 1
LICENSED MARINE ACTIVITIES

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“2017 Offshore Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017;

“2017 Onshore Regulations” means the Conservation of Habitats and Species Regulations 2017;

“Annex I reef” means a reef of a type listed in Annex I of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;

“authorised deposits” means the substances and articles specified in paragraph 4 of Part 1 of this licence;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 of the Order;

“authorised project” means Work Nos. 2, 3, 4 and 5 described in paragraph 3 of Part 1 of this licence or any part of that work;

“buoy” means any floating device used for navigational purposes or measurement purposes;

“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, and/or rock placement (but not material used for cable crossings);

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for pre-construction monitoring surveys approved under this licence and “commenced” and “commencement” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order;

“European site” has the meaning given in regulation 27 of the 2017 Offshore Regulations or regulation 8 of the 2017 Onshore Regulations as appropriate;

“interconnector cable” means a network of cables between the offshore substations;

“jacket foundation” means a lattice type structure constructed of steel, which may include scour protection and additional equipment such as, J-tubes, corrosion protection systems and access platforms;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“layout principles” means the document certified as the layout principles by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc);

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace, to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“MCZ” means a marine conservation zone designated under section 116(1) of the 2009 Act or any area which is recommended for such designation to the relevant secretary of state in accordance with the 2009 Act unless the secretary of state determines that it shall not be designated as a marine conservation zone;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“monopile foundation” means a steel pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“offshore accommodation platform” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the wind turbine generators;

“offshore electrical installations” means the offshore type 1 transformer substations, the offshore type 2 transformer substations, the offshore HVAC booster stations, the offshore type 1 HVDC converter substations and the offshore type 2 HVDC converter substations forming part of the authorised development;

“offshore export cable” means a network of cables for as described in Work No.2(e) and Work No.3(d).

“offshore HVAC booster station” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

- (a) electrical equipment required to provide reactive power compensation; and
- (b) housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the substation;

“offshore transformer substation” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage and provide reactive power compensation; and
- (b) housing accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“offshore type 1 HVDC converter substation” means the smaller version of the offshore transformer substations assessed in the environment statement;

“offshore type 2 HVDC converter substation” means the larger version of the offshore transformer substations assessed in the environment statement;

“offshore type 1 transformer substation” means the smaller version of the offshore transformer substations assessed in the environment statement;

“offshore type 2 transformer substation” means the larger version of the offshore transformer substations assessed in the environment statement;

“Order” means the Hornsea Project Four offshore Wind Farm Order 20[];

“the offshore Order limits and grid coordinates plan” means the plan certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc);

“offshore works plan” means the plan certified as the offshore works plan by the Secretary of State for the purposes of the Order.

“outline marine mammal mitigation protocol” means the document certified as the outline marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“outline marine written scheme of investigation” means the document certified as the outline offshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure jacket foundations;

“statutory historic body” means Buildings and Monuments Commission for England, the relevant local authority or its successor in function;

“suction bucket” means a steel cylindrical structure attached to the legs of a jacket foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“mono suction bucket foundation” means a steel cylindrical structure which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential, and may include scour protection and additional equipment such as J-tubes;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means Orsted Energy Hornsea Project Four Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation or transition piece; and

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT);

(b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Marine Management Organisation

Marine Licensing Team

Lancaster House Hampshire Court

Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;

- (b) Marine Management Organisation (local office)

[];

- (c) Trinity House

Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;

- (d) The United Kingdom Hydrographic Office

Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;

- (e) Maritime and Coastguard Agency

Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2433;

- (f) Natural England

4th Floor
Foss House
1-2 Peasholme Green
York
YO1 7PX
Tel: 0300 060 4911;

- (g) Historic England

Brooklands
24 Brooklands Avenue
Cambridge
CB2 8BU.

Details of licensed marine activities

2. Subject to the licence conditions at Part 4, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea within the Order limits seaward of MHWS of the substances and articles specified in paragraph 4 below and within Work nos. 2, 3 and 4 up to 928,735 cubic metres of inert material of natural origin produced during construction drilling or

seabed preparation for foundation works and cable sandwave preparation works within Work Nos. 2, 3, 4 and 5;

- (b) the construction of works in or over the sea and/or on or under the sea bed;
- (c) dredging for the purposes of seabed preparation for foundation works and/or electrical circuit works;
- (d) boulder clearance works by displacement ploughing or subsea grab technique or any other equivalent method;
- (e) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation;
- (f) removal of static fishing equipment; and
- (g) site preparation works.

3. Such activities are authorised in relation to the construction, maintenance and operation of—

Work No.2—

- (a) up to six offshore type 1 transformer substations each fixed to the seabed by one of monopile foundation, mono suction bucket foundation, or jacket foundation, and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge;
- (b) up to three offshore type 2 transformer substations each fixed to the seabed by one of monopile foundations, mono suction bucket foundations, or jacket foundations, , pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations, and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge;
- (c) in the event that the mode of transmission is HVDC, up to three HVDC converter substations fixed to the seabed within the area shown on the offshore works plan by one of monopile foundation, mono suction bucket foundation, jacket foundation, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations;
- (d) a network of cables;
- (e) up to six cable circuits between Work No. 2 and Work No. 3, and between Work No. 3 and Work No.5 consisting of offshore export cables along routes within the Order limits seaward of MLWS including one or more cable crossings; and
- (f) up to eight temporary horizontal directional drilling exit pits;

Work No.3—

- (a) in the event that the mode of transmission is HVAC up to three offshore HVAC booster stations fixed to the seabed within the area shown on the offshore works plan by one of monopile foundation, mono suction bucket foundation, jacket foundation, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations; and
- (b) in the event that the mode of transmission is HVAC, up to six cable circuits between Work No. 2 and Work No. 3, and between Work No. 3 and Work No.5 consisting of offshore export cables along routes within the Order limits seaward of MHWS including one or more cable crossings;

Work No. 4— a temporary work area associated with Work No.2 and Work No.3 for vessels to carry out anchoring and positioning alongside Work No.2 or Work No.3.

Work No. 5— works consisting of—

- (c) up to six cable circuits and associated electrical circuit ducts between Work No. 4 to Work No. 6;
- (d) up to eight temporary horizontal directional drilling exit pits; and
- (e) up to eight horizontal directional drilling launch pits;

In connection with such Works Nos. 2, 3, 4 and 5 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement and the provisions of this license, including—

- (a) scour protection around the foundations of the offshore electrical installations;
- (b) cable protection measures such as the placement of rock and/or concrete mattresses,;
- (c) the removal of material from the seabed required for the construction of Work Nos. 2, 3, 4 and 5 and the disposal within Work nos. 2, 3 and 4 up to 928,735 cubic metres of inert material of natural origin within Order limits produced during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (d) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

5. The grid coordinates for that part of the authorised development comprising Work Nos. 2, 3, 4 and 5 are specified below and more particularly on the offshore Order limits and grid coordinates plan—

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
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General provisions

6. This licence remains in force until the authorised project has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of sections 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 5 (benefit of the Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or project are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the MMO that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Arbitration

10.—(1) Any difference under any provision of this licence, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 13 of the Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Where the referral to arbitration under paragraph (1) relates to a difference with the Secretary of State, in the event that the parties cannot agree upon a single arbitrator within the specified time period stipulated in paragraph (1), either party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

(3) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

PART 2 CONDITIONS

Design parameters

1.—(1) The total number of offshore electrical installations shall not exceed nine, and shall consist of no more than—

- (a) six offshore type 1 transformer substations;
- (b) three offshore type 2 transformer substations;
- (c) three offshore HVAC booster stations; and
- (d) three offshore HVDC converter stations.

(2) The dimensions of any offshore type 1 transformer substations forming part of the authorised project must not exceed—

- (a) 90 metres in height when measured from LAT;
- (b) 90 metres in length; and
- (c) 90 metres in width.

(3) The dimensions of any offshore type 2 transformer substations forming part of the authorised project must not exceed—

- (a) 100 metres in height when measured from LAT;
- (b) 180 metres in length; and
- (c) 90 metres in width.

(4) The dimensions of any offshore HVAC booster station forming part of the authorised project must not exceed—

- (a) 90 metres in height when measured from LAT;
- (b) 90 metres in length; and
- (c) 100 metres in width.

(5) The dimensions of any offshore type 1 HVDC converter substations forming part of the authorised project must not exceed—

- (a) 90 metres in height when measured from LAT;
- (b) 90 metres in length; and
- (c) 100 metres in width.

(6) The dimensions of any offshore type 2 HVDC converter substations forming part of the authorised project must not exceed—

- (a) 100 metres in height when measured from LAT;

- (b) 180 metres in length; and
- (c) 90 metres in width.

(7) Offshore electrical installation foundation structures forming part of the authorised scheme must be one of the following foundation options—

- (a) for offshore type 1 transformer substations and offshore HVAC booster stations either monopile foundations, mono suction bucket foundations, jacket foundations, or jacket foundations; and
- (b) for offshore type 2 transformer substations and offshore HVDC converter stations either monopile foundations, mono suction bucket foundations, jacket foundations, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations.

(8) No offshore electrical installation—

- (a) jacket foundation employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than four metres; and
- (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.

(9) The total seabed footprint area for offshore electrical installation foundations must not exceed—

- (a) 118,125 square metres excluding scour protection; and
- (b) 463,125 square metres including scour protection.

(10) The area of scour protection material for offshore electrical installation foundations must not exceed 293,125 square metres.

(11) The total number of cable crossings when combined with the deemed marine licence granted under Schedule 11 of the Order must not exceed 55, unless otherwise agreed between the undertaker and the MMO.

2.—(1) The total length of the cables and the volume of their cable protection (excluding cable crossings) must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work Nos. 2 and 3 and 5	744 kilometres	927,000 cubic metres

3.—(1) [The total length of the cables in Work No.2(c) and the volume of their cable protection when combined with the cable authorised under Work No.1(c) of the deemed marine licence granted under Schedule 11 of the Order must not exceed the following—]

<i>Length</i>	<i>Cable protection</i>
[1,055] kilometres	[] cubic metres

(2) Any cable protection authorised under this licence must be deployed within 20 years from the date of the grant of the Order unless otherwise agreed by the MMO.

Maintenance of the authorised development

4.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this licence or an agreement made under this licence provides otherwise.

(2) No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.

(3) Maintenance works include but are not limited to—

- (a) offshore electrical installation component replacement;
- (b) offshore electrical installation painting;
- (c) removal of organic build-up;
- (d) cable remedial burial;

- (e) cable repairs and replacement;
- (f) replacement of offshore electrical installation anodes; and
- (g) J-tube repair/replacement.

(4) Where the MMO's approval is required under paragraph (2), such approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Extension of time periods

5. Any time period given in this licence given to either the undertaker or the MMO may be extended with the agreement of the other party.

Notifications and inspections

6.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 15; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 15.
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 15 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised project.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them and within five days of the completion of the licenced activity.

(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised project or relevant part—

- (a) at least fourteen days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) on completion of construction of all offshore activities.

Confirmation of notification must be provided to the MMO within five days.

(8) A notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work Nos 2, 3, 4 and 5 and the

expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 12(1)(b). Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO.

(11) In case of damage to, or destruction or decay of, the authorised project seaward of MHWS or any part thereof including the exposure of cables the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, the Kingfisher Information Service of Seafish and the UK Hydrographic Office. In case of the development of a cable exposure the undertaker must notify the MMO and the Kingfisher Information Service within three working days following the undertaker becoming aware of it.

Aids to navigation

7.—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised project seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised project to completion of decommissioning of the authorised project seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised project seaward of MHWS including the following—

- (a) notice of commencement of construction of the authorised project within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised project.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to condition 12(1)(j) using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised project seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of condition 6(11) are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

8. The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

Aviation safety

9.—(1) The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by Air Navigation Order 2016(a) and determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority

(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the authorised project, in writing of the following information—

- (a) the date of the commencement of construction of the authorised project;
- (b) the date any offshore electrical installations are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any offshore electrical installations to be constructed;
- (e) the latitude and longitude of each offshore electrical installations to be constructed;

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised project. Copies of notifications must be provided to the MMO.

Chemicals, drilling and debris

10.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised project must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002.

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within the Order limits seaward of MHWS.

(6) The undertaker must ensure that any rock material used in the construction of the authorised project is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised project is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under condition 12(1)(d)(i).

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(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

11.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

12.—(1) The licensed activities for each phase of the project as agreed with the MMO must not commence until the following (insofar as relevant to that activity or phase of activity) have been submitted to and approved in writing by the MMO in consultation with, where relevant, Trinity House and the MCA—

- (a) A design plan or plans at a scale of between 1:25,000 and 1:50,000, or in such other format as may be appropriate, including detailed representation on the most suitably scaled admiralty chart, which shows, in accordance with the layout principles—
 - (i) the proposed location, including grid co-ordinates of the centre point of the proposed location for each offshore electrical installation, subject to any micro-siting required due to anthropological constraints, environmental constraints or difficult ground conditions and choice of foundation of all offshore electrical installations;
 - (ii) the height, length and width of all offshore electrical installations;
 - (iii) the length and arrangement of all cables comprised in Work Nos. 2, 3, and 5;
 - (iv) the dimensions of all monopile foundations, mono suction bucket foundations, jacket foundations, gravity base foundations, pontoon gravity base 1 foundations and pontoon gravity base 2 foundations;
 - (v) the proposed layout of all offshore electrical installations including any exclusion zones identified under sub-paragraph 12(2)(d); and
 - (vi) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to sub-paragraph 12(2)(d) [or relating to any Annex I reefs identified as part of surveys undertaken in accordance with condition 16];to ensure conformity with the description of Work Nos. 2, 3, 4 and 5 and compliance with conditions 1 to 3 above.
- (b) a construction programme to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works; and
 - (iii) an indicative written construction programme for all offshore electrical installations and electrical circuits comprised in the works at paragraph 2(g) of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in paragraph (ii) above);unless otherwise agreed in writing with the MMO.
- (c) a construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—

- (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works and having regard to any mitigation scheme pursuant to sub-paragraph 12(1)(f);
 - (ii) advisory safe passing distances for vessels around construction sites;
 - (iii) cable installation;
 - (iv) contractors;
 - (v) vessels and vessels transit corridors;
 - (vi) codes of conduct for vessel operators;
 - (vii) associated ancillary works;
 - (viii) guard vessels to be employed; and
 - (ix) where relevant, details of means to address impacts on European sites.
- (d) a project environmental management and monitoring plan covering the period of construction and operation to include details of—
- (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised project in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) a marine biosecurity plan detailing how the risk of introduction and spread of invasive non-native species will be minimised;
 - (iv) waste management and disposal arrangements;
 - (v) a vessel management plan, to determine vessel routing to and from construction sites and ports, to include a code of conduct for vessel operators;
 - (vi) the appointment and responsibilities of a company fisheries liaison officer; and
 - (vii) all spatial data for archaeological exclusion zones and application of a protocol for archaeological discoveries
- (e) a scour protection management plan providing details of the need, type, sources, quantity and installation methods for scour protection, which plan must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.
- (f) proposed pre-construction surveys, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 16, 17 and 18.
- (g) in the event that driven or part-driven pile foundations are proposed to be used, a piling marine mammal mitigation protocol, in accordance with the outline marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, including details of soft start procedures with specified duration periods following current best practice as advised by the relevant statutory nature conservation bodies.
- (h) a cable specification and installation plan, to include—
- (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a sandwave clearance plan for all designated sites affected, including details of the volumes of material to be dredged, timing of works, locations for disposal and monitoring proposals;
 - (iii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA) to be taken to ensure existing and future safe navigation is not compromised or similar such assessment to

ascertain suitable burial depths and cable laying techniques, including cable protection; and

- (iv) proposals for the volume and areas of cable protection to be used for each cable crossing, and proposals for timing and methodology for reporting on actual volumes and areas post construction; and
- (v) proposals for monitoring offshore cables including cable protection during the operational lifetime of the authorised project which includes a risk based approach to the management of unburied or shallow buried cables.
- (i) an offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase;
- (j) an aid to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of condition 8 for the lifetime of the authorised project.
- (k) In the event that driven or part-driven pile foundations are proposed to be used, the licensed activities, or any phase of those activities must not commence until a site integrity plan has been submitted to the MMO and the MMO is satisfied that the plan provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2017 Offshore Regulations) of a relevant site, to the extent that harbour porpoise are a protected feature of that site.

(2) The licensed activities or any part of those activities must not commence unless no later than six months prior to the commencement a marine written scheme of archaeological investigation has been submitted to and approved by the MMO, in accordance with the outline marine written scheme of investigation, and in accordance with industry good practice, in consultation with the statutory historic body to include—

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
- (c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within six months of any survey being completed;
- (d) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones prior to construction;
- (e) monitoring of archaeological exclusion zones during and post construction;
- (f) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS ('Online Access to the Index of archaeological investigationS') form with a digital copy of the report within six months of completion of construction of the authorised project, and to notify the MMO (and East Riding of Yorkshire Council where the report relates to the intertidal area) that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
- (g) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised project;
- (h) implementation of the Offshore Renewables Protocol for Reporting Archaeological Discoveries as set out by The Crown Estate; and
- (i) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.

(3) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific outline

written scheme of investigation (which must accord with the details set out in the outline offshore written scheme of investigation) which has been submitted to and approved by the MMO.

13.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 12 (save for that required under condition 12(1)(f)) must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) The pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting required under condition 12(1)(f) must be submitted in accordance with the following, unless otherwise agreed in writing with the MMO—

- (a) at least four months prior to the first survey, detail of any pre-construction surveys and an outline of all proposed monitoring;
- (b) at least four months prior to construction, detail on construction monitoring; and
- (c) at least four months prior to commissioning, detail of post-construction (and operational) monitoring.

(3) The design plan required by condition 12(1)(a) shall be prepared by the undertaker and determined by the MMO in accordance with the layout principles.

(4) The MMO shall determine an application for consent made under this article within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(5) Where the MMO is minded to refuse an application for approval made under condition 12 and notifies the undertaker accordingly, or the MMO fails to determine the application for approval under condition 12 within the period prescribed in sub-paragraph (3), the undertaker may refer the matter for determination in accordance with article 37 (arbitration) OR article 38 (requirements, appeals, etc.) of the Order.

(6) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 12, unless otherwise agreed in writing by the MMO.

Offshore safety management

14. No part of the authorised project may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency response and co-operation for the construction, with provision for update prior to the commencement of each of the operation and decommissioning phases of the authorised project in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” (or any equivalent guidance that replaces or supersedes it), and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised project, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

Reporting of engaged agents, contractors and vessels

15.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised project a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Pre-construction monitoring and surveys

16.—(1) The undertaker must, in discharging condition 12(1)(f), submit a monitoring plan or plans in accordance with an in-principle monitoring plan for written approval by the MMO in consultation with the relevant statutory bodies, which shall contain details of proposed surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report, and;

- (a) the survey proposals must be in general accordance with the principles set out in the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the preconstruction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition the pre-construction surveys must comprise, in outline—

- (a) a high-resolution swath bathymetric survey to include a 100% coverage and a side-scan sonar survey of the parts of the offshore Order limits within which it is proposed to carry out construction works and disposal activities under this licence to—
 - (i) provide a baseline of the seabed environment and bathymetric conditions against which specific post construction marine process monitoring can be undertaken, as set out within the in-principle monitoring plan;
 - (ii) determine the location, extent and composition of any biogenic or geogenic reef features, as set out within the in-principle monitoring plan;
 - (iii) inform future navigation risk assessments as part of the cable specification and installation plan; and
 - (iv) inform the identification of any archaeological exclusion zone and post consent monitoring of any such archaeological exclusion zone.

(3) Any monitoring report compiled in accordance with the monitoring plans provided under this condition must be provided to the MMO no later than four months following completion of the monitoring to which it relates.

Construction monitoring

17.—(1) The undertaker must in discharging condition 12(1)(f) submit a construction monitoring plan or plans for written approval by the MMO in consultation with the relevant statutory nature conservation body, which shall include details of any proposed construction monitoring, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in general accordance with the principles set out in the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition the construction monitoring plan must include in outline details of vessel traffic monitoring by automatic identification system for the duration of the construction period including obligations to report annually to the MMO and the MCA during the construction phase of the authorised development.

(3) The undertaker must carry out the surveys specified within the construction monitoring plan or plans in accordance with that plan or plans unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation body.

Post-construction monitoring

18.—(1) The undertaker must in discharging condition 12(1)(f) submit a post-construction monitoring plan or plans for written approval by the MMO in consultation with the relevant statutory nature conservation body including details of proposed post-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in general accordance with the principles set out in the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) Subject to receipt of specific proposals the post-construction survey plan or plans must include, in outline—

- (a) details of a high-resolution swath bathymetric survey to be undertaken no sooner than 6 months following completion of construction works and disposal activities were carried out under this licence to assess recovery of sandwave features within any designated site, and any changes bathymetric profile in designated sites following application of cable protection material. The need for further surveys must be agreed in writing with the MMO following submission of the first year of survey data;
- (b) details of a survey to determine any change in the location, extent and composition of any biogenic or geogenic reef feature identified in the pre-construction survey in the parts of the offshore Order limits in which construction works were carried out. The survey design must be informed by the results of the pre-construction benthic survey;
- (c) a bathymetric survey to monitor the effectiveness of archaeological exclusion zones identified to have been potentially impacted by construction works. The data shall be analysed by an accredited archaeologist as defined in the offshore written scheme of investigation required under condition 12(2); and
- (d) a swath bathymetric survey to IHO Order 1a of the installed export cable route and provision of the data and survey report(s) to the MMO, MCA and UKHO.

(3) The undertaker must carry out the surveys specified within the post-construction monitoring plan or plans in accordance with that plan or plans, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation body.

Timing of monitoring report

19. Any monitoring report compiled in accordance with the monitoring plans provided under conditions 16, 17 and 18 must be provided to the MMO no later than four months following completion of the monitoring to which it relates, unless otherwise agreed with the MMO.

Reporting of impact pile driving

20.—(1) Only when driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—

- (a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements;
- (b) at six month intervals following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements;
- (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements.

(2) The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within 7 days of the submission.

(3) For the purpose of this condition—

- (a) “Marine Noise Registry” means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;
- (b) “Forward Look” and “Close Out” requirements are as set out in the UK Marine Noise Registry Information.

SCHEDULE 13

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the Arbitrator is appointed pursuant to article 37 of the Order.

(2) The parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the parties. Any dispute which is not resolved amicably by the senior management of the parties within twenty (20) business days of the dispute arising, or such longer period as agreed in writing by the parties, shall be subject to arbitration in accordance with the terms of this Schedule.

(3) The Arbitration shall be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

Time periods

2.—(1) All time periods in these Arbitration Rules will be measured in business days and this will exclude weekends, bank and public holidays.

(2) Time periods will be calculated from the day after the Arbitrator is appointed which shall be either—

- (a) the date the Arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the Arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the Arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the Arbitrator being appointed, the Claimant shall provide both the Respondent and the Arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, and the remedy it is seeking;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the Claimant’s statements under sub-paragraph (2) by the Arbitrator and Respondent, the Respondent shall provide the Claimant and the Arbitrator with—

- (a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
- (c) any objections it wishes to make to the Claimant’s statements, comments on the Claimant’s expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within 5 days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with—

- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (c) any expert report in response to the Respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent;
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The Arbitrator shall make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

(2) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within 5 days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the Arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the Arbitrator shall direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing shall not be less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

(5) A decision will be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

(6) There will be no process of examination and cross-examination of experts, but the Arbitrator shall invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) At least 20 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) If more than one expert is called, they will jointly confer and produce a joint report or reports within 10 days of the issues being provided; and
- (c) The form and content of a joint report shall be as directed by the Arbitrator and must be provided at least 5 days before the hearing.

(7) Within 10 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator shall take these submissions into account in the Award.

(8) The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which he/she is appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before him/her attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(10) The Arbitrator's award shall include reasons. The parties shall accept that the extent to which reasons are given shall be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The Arbitrator has all the powers of the Arbitration Act 1996(a), including the non-mandatory sections, save where modified by these Rules.

(2) There shall be no discovery or disclosure, except that the Arbitrator shall have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and/or procedure—

- (a) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the Arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

Costs

6.—(1) The costs of the Arbitration shall include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

(2) Subject to sub-paragraph (3), the Arbitrator will award recoverable costs on the general principle that each party should bear its own costs.

(3) The Arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation shall be open to and accessible by the public.

(2) The Arbitrator may direct that the whole or part of a hearing is to be private and/or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph shall prevent any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

(a) 1996 c.23

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of an offshore wind farm generating station located in the North Sea approximately 65 kilometres due east of Flamborough Head at its closest point together with associated development including an energy storage facility. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

This Order also grants deemed marine licences under Part 4 of the Marine and Coastal Access Act 2009 in connection with the wind farm. The marine licences impose conditions in connection with the deposits and works for which they grant consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 36 (certification of plans and documents etc) together with a copy of any guarantee or alternative form of security approved by the Secretary of State pursuant to article 43 (funding), may be inspected free of charge at the offices of Orsted at 5 Howick Place, London SW1P 1WG.