



**DOGGER BANK
TEESSIDE A & B**

**March
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The Dogger Bank (Teesside A and B) Offshore Wind Farm Explanatory Memorandum

Pursuant to Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

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The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Regulation 5(2)(c)

**The Dogger Bank (Teesside A and B) Offshore Wind Farm
Development Consent Order
Explanatory Memorandum**

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**DEPARTMENT OF ENERGY AND CLIMATE CHANGE
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1. Introduction

- 1.1 This Memorandum accompanies an application for development consent by Forewind Limited ("the Company") and explains the purpose and effect of each article and Schedule in the draft Dogger Bank Teesside A&B Offshore Wind Farm Order ("the Order") (**Application reference 3.1**), as required by Rule 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹. Throughout the application documents the development consent order is also abbreviated to 'DCO'.
- 1.2 The draft Order forms part of the application made by the Company to the Secretary of State and would confer powers to construct two offshore wind turbine electricity generating stations ("the Generating Stations") proposed to be constructed within the Dogger Bank Zone (described in section 3 below) on the bed of the North Sea between approximately 125km and 290km off the UK coast of Teesside. In addition the draft Order would confer powers for associated development comprising offshore and onshore export cables, onshore grid connections, electrical substations and associated apparatus.
- 1.3 Under the terms of the draft Order powers will be conferred upon two companies established for the purpose of taking forward the construction and operation of the Generating Stations together with the associated development. The two companies (Bizco 2 and Bizco 3) are identified in the draft Order and for the purposes of this Explanatory Memorandum are referred to together as "the Undertaker". These companies are described in more detail in paragraph 2.4 below.
- 1.4 The draft Order also seeks to confer upon the Undertaker powers of compulsory acquisition of land or rights over land which are required for the onshore elements of the project or to facilitate them, or that are incidental to them within the meaning of section 122 of the Planning Act 2008² ("the 2008 Act").
- 1.5 In accordance with sections 117(4) and 120(5) of the 2008 Act, the draft Order is provided in the form of a Statutory Instrument because it seeks to apply, modify or exclude certain statutory provisions.
- 1.6 The draft Order is based on the Infrastructure Planning (Model Provisions)(England and Wales) Order 2009 (S.I. 2009 No. 2265) ("the 2009 Order") as well as relevant precedents. The 2009 Order contains model provisions which were formally prescribed for inclusion in a development consent order under section 38 of the 2008 Act. The former Infrastructure Planning Commission (IPC) was required to have regard to these provisions when exercising its power to make an Order granting development consent. However,

¹ S.I. 2009/2264

² 2008 c.29

the Localism Act 2011 repealed section 38 and removed the need for the decision maker to have regard to the prescribed model provisions in deciding an application. Planning Inspectorate advice note thirteen 'Preparing the draft Order and explanatory memorandum, April 2012' explains that the model provisions were intended as a guide for developers in drafting Orders, rather than a rigid structure, but aided consistency and assisted developers to draft a comprehensive set of lawful provisions.

- 1.7 Advice note thirteen suggests that provisions used in 'predecessor' regimes such as for Transport and Works Act Orders or Harbour Empowerment Orders may also be helpful in the drafting. This explanatory memorandum includes an explanation in relation to each provision as to whether the particular provision is based on the model provisions or a relevant precedent.
- 1.8 The guidance from Communities and Local Government on the pre-application process, 'Planning Act 2008 - Guidance on the pre-application process, January 2013' includes additional advice on the production of development consent orders. This suggests that, in drawing up the Order, applicants draw upon previous and current applications as a point of reference, which this Order has considered.
- 1.9 In addition, the Order is in the form of a statutory instrument, in line with paragraphs 84 and 85 of the guidance, and it contains the detail and provisions listed in paragraph 80. The Order takes a Rochdale envelope approach, with much of the finalised detail to be approved post-consent. Where this is the case, the authority with responsibility for discharging the requirement is identified, in line with paragraph 82 of the guidance. In most cases this is Redcar & Cleveland Borough Council for onshore works or the Marine Management Organisation (MMO) for offshore works. Statutory consultation and informal discussions have been carried out with these organisations on the content of the Order, and the wording of the requirements and conditions has been amended to reflect their comments where appropriate.

2. Background

The Company

- 2.1 The Company is a joint venture comprising four leading international energy companies which joined together to bid for the Dogger Bank Zone Development Agreement as part of The Crown Estate's third licence round for UK offshore wind farms (Round 3). Forewind combines extensive experience of international offshore project delivery and renewables development, construction, asset management and operations, with UK utility expertise spanning the complete electricity value chain. The joint venture draws on exceptional financial strength

and technical knowledge, which combined prepare it for the challenges facing Round 3 developers.

- 2.2 Each of the four owners, all leading players in their own right, recognise that by joining forces they have a unique ability to both make a significant contribution to the future of wind energy in the UK and demonstrate commitment to the continuing development of offshore wind. Forewind is committed to securing all the necessary consents required for the construction and development of the wind farms within the Dogger Bank Zone (described in section 3 below).
- 2.3 The four owners of the Company are:
- 2.3.1 RWE Innogy UK is the UK subsidiary of RWE Innogy and one of the UK's leading renewable energy developers and operators. The organisation is committed to developing and operating renewable energy projects to produce sustainable electricity.
 - 2.3.2 SSE Renewables Developments (UK) Limited is part of the SSE group. SSE has over 3,000MW of renewables generation in its portfolio making it the largest generator of electricity from renewable sources across the UK and Ireland.
 - 2.3.3 Statkraft UK Limited manages Statkraft's interests in the UK. Statkraft is Europe's largest generator of renewable energy and is the leading power company in Norway. Statkraft owns, produces and develops hydropower, wind power, gas power and district heating. Statkraft is also a major player in European power trading.
 - 2.3.4 Statoil Wind Limited is part of Statoil, an international energy company headquartered in Norway that has operations in 36 countries. Statoil is committed to accommodating the world's energy needs responsibly. In undertaking this challenge Statoil draws upon 40 years of experience from oil and gas production in harsh environments such as the North Sea.
- 2.4 To lead the investment and construction in the numerous Dogger Bank wind farm projects, a number of special purpose companies have been set up. Dogger Bank Project 2 Bizco Limited ("Project 2 Bizco" or "Bizco 2") is the undertaker for and will take forward the Dogger Bank Teesside A project from the point of consent, and Dogger Bank Project 3 Bizco Limited ("Project 3 Bizco" or "Bizco 3") is the undertaker for and will take forward the Dogger Bank Teesside B project from the point of consent. Project 2 Bizco and Project 3 Bizco are together hereafter referred to as "Bizcos". The ownership and control of the Bizcos is currently the same as for Forewind.

- 2.5 It is the intention that each of the Projects authorised by the Order can or will be undertaken separately from the other.
- 2.6 The current ownership arrangements are likely to evolve, with one of the parent companies taking a leading role in each of the respective Bizcos. The infrastructure assets that will form each wind farm may or may not be owned by the respective Bizcos. There are a range of complex issues to inform a final decision including contemplation of unincorporated versus incorporated joint venture structures. Whatever asset ownership model is selected for each project, ownership and control of each Bizco will always match the ownership and control of assets.
- 2.7 As mentioned in paragraph 1.3 above, consent is being sought to confer powers on two of these companies which are identified in the Order in respect of the Generating Stations together with the associated transmission assets. Under article 7 the provisions of the Order shall have effect solely for the benefit of the Undertaker defined in the Order. Notwithstanding this, under article 8 the Undertaker has the power to transfer some or all of the benefit of the Order. The power to transfer extends to any provision of the proposed deemed Marine Licences, more information on which is provided in section 13 below and in particular the comments provided in relation to article 38 of, and Schedule 7, to the Order.

3. The Dogger Bank Zone

- 3.1 The Dogger Bank Zone is located in the North Sea between approximately 165km and 196km off the Teesside coast and extends over an area of approximately 8,660km²; it is the largest of the nine Round 3 offshore wind farm zones.
- 3.2 Forewind aims to secure development consent for six projects within the Dogger Bank Zone (Dogger Bank Croyke Beck comprising two wind farms; Dogger Bank Teesside A&B comprising two wind farms; and Dogger Bank Teesside C&D also comprising two wind farms) which have a total target installed capacity of 7.2 GW. Forewind's focus is to secure the first four wind farms, each up to 1.2GW, or up to a total installed capacity of 7.2GW.
- 3.3 To ensure that the work associated with the delivering of Dogger Bank Zone is managed effectively, and to more evenly distribute demands on stakeholders and the supply chain, Forewind is developing the Dogger Bank Zone sequentially in stages, which are known as tranches. A zone appraisal and planning (ZAP) process was adopted by Forewind using both the available information and the outcome of stakeholder consultations to identify the optimum location for these proposed tranches.

- 3.4 Following completion of the first phase of its ZAP process in 2010, Forewind identified the boundary of Tranche A. Tranche A is an area of 2,000 km² which lies to the south west of the Dogger Bank Zone. Subsequently Tranche B was identified in October 2011 and the Tranche C and D selection report was published in August 2013.
- 3.5 Within each tranche, Forewind intends to identify at least two wind farms, each with a capacity of up to 1.2GW, making each of these offshore wind farms a Nationally Significant Infrastructure Project ("NSIP") in its own rights for the purposes of the 2008 Act.
- 3.6 In order to maintain flexibility in the location of these wind farms through the tranche development process, the area of each tranche was larger than the footprint required for the individual projects located within it. As a result, the location of those wind farms can remain flexible throughout the data collection and stakeholder consultation phase, and then the identification of project boundaries within each tranche could then be influenced by and take into account stakeholder discussions and due consideration of environmental and engineering factors.
- 3.7 The two wind farms which comprise this application for development consent, are Dogger Bank Teesside A, wholly located with Tranche Band Dogger Bank Teesside B, partly located in Tranche A and partly located in Tranche B. Jointly these two wind farms are known as Dogger Bank Teesside A&B ("the project").

4. Earlier Development of the Zone: Dogger Bank Creyke Beck

- 4.1 Following the ZAP, Forewind's development of the Dogger Bank Zone began with Dogger Bank Creyke Beck for which a development consent application was submitted with the Planning Inspectorate on 29 August 2013. This application was accepted by the Planning Inspectorate on 25 September 2013. Dogger Bank Creyke Beck comprised two wind farms, each with a generating capacity of up to 1.2 gigawatts (GW), connecting to the existing National Grid substation at Creyke Beck, in the East Riding of Yorkshire. Dogger Bank Creyke Beck will have a total combined generating capacity of up to 2.4GW.

5. Dogger Bank Teesside A&B

- 5.1 The Order seeks authority for the construction and operation of two Generating Stations (under section 37 of the 2008 Act) (Dogger Bank Teesside A and Dogger Bank Teesside B), which are the primary development for which a development consent order is sought in the Application. The Generating Stations will each have a nominal electrical output capacity of up to 1.2 GW (up to 2.4GW in total) and will generate electricity from the energy that is available from the wind.

- 5.2 The Generating Stations comprise the offshore wind turbine generators together with offshore collector and converter platforms, accommodation or helicopter platforms, meteorological stations and inter-array cabling. Offshore associated development includes high voltage direct current (HVDC) export cables, and onshore associated development includes HVDC cables, converter station(s), high voltage alternating current (HVAC) cables and grid connection works.
- 5.3 The onshore point of connection to the UK electricity transmission network for the proposed offshore wind farms is determined by National Grid through a Grid Connection Application Process. Through this process, Forewind has secured capacity for the Generating Stations at the existing National Grid Lackenby substation near Wilton Works, Teesside in the borough of Redcar & Cleveland; more details on this are provided in the National Grid Statement Regarding Onshore Interface Points, which is Appendix A to Chapter 6 of the Environmental Statement (**Application reference 6.6.1**).
- 5.4 The landfall is located between Redcar and Marske-by-the-Sea on the Teesside coastline, in the borough of Redcar & Cleveland.
- 5.5 The location of the project is shown in Figures 1.2 and 1.3 in the Non-Technical Summary ("NTS") of the Environmental Statement (**Application reference 6.36**) and the site is more fully described in sections 1.5 to 1.8 of the NTS.
- 5.6 Sections 8 and 9 of this document describe the Generating Stations and associated development in more detail. A full technical explanation of the project is contained in Chapter 5 of the Environmental Statement accompanying the application (**Application references 6.5**). A detailed Planning and Design Statement also accompanies the application (**Application reference 8.1**) which sets out the planning policy framework against which this application will be determined, along with the design rationale for both the offshore and onshore elements of the project.

6. The Offshore Transmission Regulatory Framework

- 6.1 In March 2007³, Government adopted a framework for the delivery and maintenance of offshore transmission assets; a competitive, asset based regulatory regime. This has been further developed by Government and the Office of Gas and Electricity Markets (Ofgem) to become an approach whereby multiple parties compete through a tender process to secure licences to build (where appropriate), own and operate offshore transmission assets. This provides the overarching legal and regulatory framework within which investment decisions are taken, and within which policy and regulatory developments occur.
- 6.2 Under these arrangements, Ofgem is responsible for running a competitive tender process to select an offshore transmission owner (OFTO) to own and manage offshore transmission assets. Generators of electricity have the option to construct the assets themselves before transferring them to an OFTO upon completion, or to request an OFTO to do so. Participants in the tender process bid against each other in terms of the revenue stream they would require to buy or construct the assets, and to operate and manage them.
- 6.3 The key reasons for the decision behind the competitive framework, as set out in the March 2007 document and reiterated since in joint Department of Energy and Climate Change (DECC) and Ofgem publications, were that such a regulatory regime would deliver:
- 6.3.1 cheaper and more timely offshore grid connections;
 - 6.3.2 encourage innovation through competition and enable new entrants to compete in the market;
 - 6.3.3 be more focussed on generators' requirements; and
 - 6.3.4 enable generators to construct their own transmission assets if they wish, thereby creating more certainty for generators.
- 6.4 The UK Government has placed considerable weight upon the ability of offshore wind to deliver the UK's 2020 target of 15% of total energy from renewable sources. In doing so, the Government has recognised in the "UK Renewable Energy Roadmap" (July 2011) that driving down the cost of delivery of offshore wind projects is critical to the success of the sector. One of the commitments in the Roadmap is to establish *"an industry Task Force to set out a path and action plan to reduce the costs of offshore wind to £100/MWh by 2020 and provide up to £30m of direct Government support for offshore wind cost reduction over the*

³ <http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file38705.pdf>

next 4 years” (Executive Summary). The DECC announcement of that date quoted the Minister as referring to “this vital work to drive down the costs of delivering our offshore wind ambitions”.

6.5 Therefore, the possible future transfer scenarios that may be implemented if the Order is consented are:

- 6.5.1 identification of transferees in the Order;
- 6.5.2 a split between Bizcos within the same consent, with changes to the ‘undertaker’ being made;
- 6.5.3 transfer of OFTO assets for each wind farm upon appointment of OFTO; by law Forewind is required to sell the OFTO assets;
- 6.5.4 potential appointment of a new authority to oversee or operate offshore transmission assets as part of a co-ordinated network. The potential role of such a body is being discussed at a policy level and establishing such an authority creates the possibility of the establishment of a licensed Zone Transmission Operator (TO);
- 6.5.5 two Generating Stations will each have two 500 megawatt (MW) connection agreements and will require up to four collector platforms for a permissive transfer scheme to reflect spatial division of generating assets. It is foreseeable, particularly in the operations phase, that owners would rather own a higher percentage or even 100% of a smaller wind farm rather than have a small share of a 1-1.2GW wind farm. In this scenario the consent for a wind farm could be split into two or more components.

7. Need for Flexibility in Consents for Offshore Wind Farm Development

7.1 At the time of the submission of the draft Order a number of details of the proposed development will remain uncertain. These uncertainties can realistically only be resolved between the date of the confirmed Order and the commencement of construction. Examples of uncertainties include the precise number of wind turbines, rotor diameters and blade tip heights of the turbines, separation distances between turbines, and turbine foundation types.

7.2 It is not possible to achieve certainty on the matters described above, and possibly other features of the development, because of a number of unknown factors. In particular, the dimensions and the installed capacity of the turbines cannot be established until the turbines have been procured; the detailed geotechnical information to inform the design can only reasonably be obtained following confirmation of the Order; and, wind turbine technology continues to evolve and change over what is a lengthy development and consenting phase.

- 7.3 There is therefore a need for flexibility within the Order in defining a number of aspects of the application. It is important to retain this flexibility, noting also the level of investment required to deliver the project and an understandable wish to avoid having to seek a further Order or amendments to the confirmed Order. This of course needs to be balanced against the need for a robust environmental impact assessment of the effects of the proposed wind farms. It is essential for legal reasons to match the scope of the Order to that of the environmental impact assessment. Well established case law confirms that if an Order is wider in scope than the environmental impact assessment then the Order would not be lawful.
- 7.4 The Overarching National Policy Statement (NPS) for Energy (EN-1) and the NPS for Renewable Energy Infrastructure (EN-3) provide the primary basis for decisions on applications for development consent for nationally significant renewable energy infrastructure. These documents recognise this need for flexibility, and in such cases, identify appropriate ways of addressing this need.
- 7.5 In particular, paragraph 2.6.42 of EN-3 recognises that the precise content of a proposed offshore wind farm may be unknown to the applicant at the time of the application for development consent, including the location and configuration of turbines and associated development, cable route and exact locations of offshore platforms. For this reason, EN-3 acknowledges that some flexibility may be required in the consent.
- 7.6 In such cases, EN-3 advises that applicants should take a realistic worst case (maximum likely adverse impact) approach to environmental impact assessment, and that the uncertainties already discussed should be allowed for in the consideration of the application and within any subsequently confirmed Order.
- 7.7 Government guidance on the pre-application process under the 2008 Act, "Planning Act 2008 - Guidance on the pre-application process, January 2013", also recognises that where developments will take a considerable amount of time to complete, applicants are likely to need flexibility in the Order to take advantage of future technological developments. However this in turn poses specific challenges as the draft Order needs to be detailed enough to allow the Secretary of State to make an informed and balanced decision on the impacts of the development versus the benefits. The guidance advises that applicants should identify aspects of the project where flexibility is required, and that they may wish to include provisions in the Order requiring the further approval of those parts of the project where flexibility has been retained.
- 7.8 The guidance states that the flexibility afforded to the applicant should be within clearly defined and reasonable parameters, and that such parameters should be no greater than the minimum range required to deliver the project effectively. It

is for the applicant to justify these parameters when they submit their application. For this project a justification is provided within the Environmental Statement, within supporting application documentation and partly within section 7 of this document.

- 7.9 In April 2012 the Planning Inspectorate issued advice note nine on the use of the principle known as the 'Rochdale envelope' approach. It advises that the use of a Rochdale envelope should not be used as an excuse to provide insufficient details and that developers of offshore wind farms should make every effort to finalise as much of the project as possible prior to submission of their development consent order application. Advice note nine also suggests that a practical way forward would be for the development consent order application to set out specified maxima and minima for relevant project parameters. In the case of offshore wind farms some examples are given of parameters for which flexibility is required. Some of these are discussed in paragraph 6.1 above.
- 7.10 The advice note advises that developers should be in a position to be able to identify the most likely variations of options and so provide a more focused description. However, it advises that the proposed flexibility should not permit such a wide range of materially different options that each option in itself might constitute a different project for which development consent should be sought and an Environmental Statement provided, nor allow a scheme to be implemented which is materially different from that assessed in the Environmental Statement. These principles are endorsed in relevant case law. The advice note states that if approved, any flexibility in the project will need to be reflected in appropriate development consent order provisions and any conditions attached to the deemed Marine Licences issued with the Order.
- 7.11 In the light of this policy, guidance and advice, Forewind has given careful consideration as to how the proposed development can be articulated within the Order, so as to provide the required degree of flexibility, whilst at the same time specifying worst case parameters which are sufficient to define the project. This is explained in more detail in section 8 below.

8. Application of Design Parameters from Advice Note Nine

- 8.1 As previously explained, a Rochdale envelope approach has been taken to the development description in accordance with the Overarching National Policy Statement (NPS) for Energy (EN-1) and the NPS for Renewable Energy Infrastructure (EN-3). The scope of the envelope has been defined in accordance with Planning Inspectorate's advice note nine (April 2012).
- 8.2 The project description in the draft Order is based upon Chapter 5 in the Environmental Statement, which provides the maximum extent of the proposed authorised development and the flexibility sought. This describes the realistic

worst case parameters on which the assessment within the Environmental Statement is based and has been the subject of consultation with key stakeholders and the public. The envelope seeks to maintain the flexibility needed whilst providing sufficient detail so that the project is clearly defined and a robust environmental impact assessment has been undertaken.

- 8.3 Advice note nine proposes that an Order seeking development consent under the 2009 Act sets out specified maximum and minimum parameters for certain elements, whilst recognising that other criteria may also be relevant. Those listed are: number of turbines; nacelle (hub) height; blade tip height; minimum clearance above mean sea level; and minimum separation distances between turbines.
- 8.4 Each of these is described in more detail below, in addition to an account of other parameters also used to define the project.

Total MW capacity

- 8.5 This is not included in the list of parameters in the advice note but, along with the project boundary, is one of the most important defining characteristics of an offshore wind project. The 2008 Act uses the total expected MW installed capacity as the key determinant of the size of a project and for Dogger Bank Teesside A&B the installed capacity is up to 2.4GW (2,400MW), which exceeds the threshold for a nationally significant infrastructure project. The grid entry capacity is based on the connection agreement into National Grid's existing onshore substation at Lackenby. 2GW (2,000MW) of grid connection capacity has been secured, based on 1,000MW for Dogger Bank Teesside A (also referred to as Project A) and 1,000MW for Dogger Bank Teesside B (also referred to as Project B). Notwithstanding this grid connection capacity, the Order provides for a maximum installed generating capacity of 2,400MW (2.4 GW) which allows the projects to be optimised for maximum efficiency taking into account electrical losses, availability, and the natural variability of a wind farm's output. This is described as 'overplanting' (adding additional turbines to offset losses and increase the utilisation of the transmission capacity) and this potentially allows for an improved economic optimisation of the project. Further details on the project's capacities and overplanting are provided in Chapter 5 of the Environmental Statement.

Total number of turbines

- 8.6 This is informed by the total maximum capacity and the range of turbine sizes used within the Environmental Statement. The impacts arising from a range of turbine sizes are presented in Chapter 5 of the Environmental Statement, based on the parameters likely for turbines up to 6MW and greater than 10MW; these form the basis of the environmental assessment.

- 8.7 To reduce significant effects on ornithology, a key embedded mitigation is the restriction of the maximum number of wind turbine generators within the Order. The maximum total number of wind turbine generators permitted for the project is 400 (up to 200 turbines each for Dogger Bank Teesside A and B).
- 8.8 In addition, in order to provide further mitigation against bird collisions, further embedded mitigation has been implemented by restricting the minimum lower blade tip height above highest astronomical tide (HAT) to 26 metres.
- 8.9 Although advice note 9 suggests a minimum number of turbines should be specified, this is not considered appropriate for the project. For commercial purposes a developer will seek to optimise the output from the site, within the parameters assessed within the Environmental Statement. It should be assumed that most value will be achieved from the project, which is a commercial issue rather than one to be captured within the consent.

Turbine dimensions

- 8.10 The turbine manufacturer or turbine model has not yet been determined. Due to technological advances which could take place between the development consent being granted and the commencement of construction, setting out rigid parameters for turbine sizing could rule out potentially suitable machines. The parameters used within the project description to fix the turbine dimensions envelope, which are secured by the Order, are as follows: maximum upper blade tip, minimum lower blade tip, maximum rotor diameter and maximum project rotor swept area. The tip height will not exceed 315 metres above the level of the sea at the highest astronomical tide (HAT) and, as explained above, there will be a minimum blade clearance of 26 metres between the lowest point of the rotating blade of the wind turbine and the level of the sea at HAT (as a result of mitigation for ornithology). Although a reference point of Mean High Water Springs (MHWS) is used in the Guidance on UK Navigational Practice, Safety and Emergency Response Issues (MGN371), HAT is used in the Order instead as it is a more conservative measure and is easier to determine. The Order contains details of the maximum total rotor swept area for each project in 4.35 km² which simplifies the envelope and is a more robust approach as it defines a continuum between the dimensions for the individual turbines described. This approach, combined with the project total MW capacity, links the number of turbines and the rotor diameter in a clear way, and allows a regulator to calculate the maximum size of wind turbine which will lie within the assessed envelope at any capacity. For instance, the project capacity in GWs allows the maximum number of wind turbines to be calculated for any turbine capacity. The number of turbines along with the maximum project swept area then restricts the maximum rotor diameter for each turbine. Furthermore, the thresholds on key figures (such as number of turbines and a maximum rotor diameter of 215 metres) clearly define the limits of the envelope. Figures 3.1, 3.2 and 3.3 in

Chapter 5 of the Environmental Statement show indicative dimensions for the various turbine sizes. The height of the nacelle (hub) height is not included within the description because the limits of this value are already restricted to a range by the specified rotor diameter and rotor tip heights, therefore the other dimensions referenced above are considered to define the turbine size sufficiently.

Separation distances between turbines

- 8.11 The final layout of the turbines will be determined post-consent in conjunction with the MMO. However, in order to address concerns expressed by other marine users, some restrictions on the turbine spacing is included within the draft Order. This confirms the minimum spacing is a circular area around each turbine of a distance of six times the rotor diameter. A minimum distance of 750 metres is also included to ensure that, regardless of the rotor diameter (in the case of smaller turbines), the spacings meet the distances requested by other marine users. Requirement 7 (Layout Rules) within the draft Order ensures that the final layout of the array areas, including turbine positions and spacings, is designed in accordance with the principles set out in Chapter 5 of the Environmental Statement; these principles capture layouts agreed with stakeholders including the Marine and Coastguard Agency.

Foundation parameters

- 8.12 The Order provides for four different main foundation types for wind turbine generators and meteorological stations: gravity base, monopole, multileg and floating structure secured by chain and anchor, and two main types for offshore platforms: multileg or gravity base. The requirement to consent a wide range of foundation options is driven by a number of factors including: the variability in water depth and ground conditions across the project areas, the uncertainty in the size of the wind turbines and offshore platforms, the range of detailed design approaches which may be selected by suppliers, and the costs of the materials of the foundation types at the time of project design and build. Detailed foundation geometry is inherently variable and it is not considered realistic to identify a single set of limiting structural dimension parameters to represent the full consent envelope. Therefore, in order to define a realistic limiting description of the foundation geometry for the Rochdale envelope, key aspects of the foundations have been identified as follows. These are the parameters used within the environmental assessment and are captured within the draft Order.
- 8.13 The obstruction of the wind turbine foundations to the passage of waves and tidal currents is the key input to assessment of impacts upon marine physical processes (rather than detailed foundation geometry). Following consultation with experts in the field of fluid flow modelling, the “wave reflection coefficient” was identified as a value which appropriately describes this property of a

foundation structure. A recognised methodology for consistently calculating this value was developed and this is detailed within Appendix 5.B of the Environmental Statement. Appropriate worst-case wave reflection coefficients have therefore been developed and the range of values assessed within the environmental impact assessment is shown in Table 3.6 in Chapter 5 of the Environmental Statement. The Order therefore restricts the development to wind turbine foundations which lie within this range. The Order cross-refers to these values as set out within the relevant sections of the Environmental Statement.

- 8.14 Worst-case seabed footprint areas and maximum overall foundation widths have also been developed through concept design studies. These are commonly required in assessments on subjects such as impacts on the seabed and the potential for vessel collisions, and are also useful when visualising the foundations described. To capture these within the Order, Requirements 4 (for wind turbine generators) and 5 (for offshore platforms) include figures for the maximum width of supporting structure in metres and the maximum seabed footprint area per foundation (including scour protection) in metres squared.
- 8.15 This approach ensures foundation selections can be easily verified as falling within the project assessment envelope and this is robustly linked to the environmental impacts, giving certainty that the foundations within the consent envelope will always have environmental impacts within the assessed limits.

Offshore platforms

- 8.16 The total number of offshore platforms will not be known until the design stage, but Part 1 of Schedule 1 in the Order provides the following maximum numbers of each type of platform: up to eight collector platforms, two converter platforms and up to four accommodation or helicopter platforms. The locations of the platforms will depend on the final layout and post-consent design optimisation, however the Order restricts all platforms to the array areas (Work No.s 1A and 1B) and the final layout will be agreed in conjunction with the MMO. In addition, the precise dimensions of each of the platforms cannot be fixed at the current time so maximum dimensions are included in the Order including width, length and height. The Order also includes a provision to combine any of these platforms and meteorological stations, so it may be that a collector platform and accommodation platform are combined, or several collector platforms are combined for efficiencies. The worst case assessed in the Environmental Statement relates to the maximum number of platforms and their footprint. Because the dimensions of any of the combined structures must not exceed those of the individual platforms comprising the combined structure, any reduction in the number of platforms through combinations will not increase any of the identified realistic worst case environmental impacts within the Environmental Statement. The draft Order restricts the seabed footprint area of

subsea / scour protection associated with offshore platforms, and the maximum dimensions for the seabed footprint area per foundation are also specified.

Offshore cables

- 8.17 As the number, layout and total length of the cables will not be determined until the post-consent design optimisation, parameters are included to limit the extent of the cables within the Order limits. The width of the cable corridor captured within the Order limits is restricted to 2km as this was considered the minimum necessary to give sufficient space to install cabling for both Dogger Bank Teesside A and Teesside B with enough flexibility to avoid unknown constraints, such as debris.

Requirements within the Order restrict the maximum number of HVDC cables to two per project and set a maximum length for the HVDC export cables.

Onshore parameters

- 8.18 The requirements for the onshore cable width are explained in section 4.3 of Chapter 5 in the Environmental Statement, which justifies a working width of 36 metres for the HVDC route and 39 metres for the HVAC route and identified on the onshore works plan. This relates to the standard working width required for either a trench or a minor horizontal directional drill (HDD). This overall width of the corridor is split into two separate Work No.s 6A and 6B, with a working width of 18 metres for each of the Generating Stations' HVDC cable routes. In some areas, for example, where a longer and / or deeper underground section of cabling is necessary, a major HDD will be required. This includes drilling under the Network Rail line and trunk roads. For these sections the cable route for the drilled (below-ground) sections, between the two end compounds, will typically be 50 metres, which is reflected in the Order Limits.

9. Nationally Significant Infrastructure – The Generating Stations

- 9.1 Pursuant to sections 14(1)(a) and 15(3) of the 2008 Act, the construction or extension of an offshore electricity generating station which is in waters in or adjacent to England and whose capacity is expected to be more than 100 megawatts is an NSIP for the purposes of the 2008 Act.
- 9.2 Section 31 of the 2008 Act provides that development consent is required under the Act for development that is or forms part of a NSIP.
- 9.3 As the proposed Generating Stations as defined in the Order are offshore electricity generating stations each with a proposed nominal gross electrical output capacity of 1.2 GW, they each form an NSIP in their own right for the purposes of the 2008 Act and an application for development consent must

therefore be made to the Secretary of State under section 37 of the 2008 Act to authorise their construction.

- 9.4 The combined elements of the two Generating Stations (each constituting an NSIP) include:
- 9.4.1 up to 400 offshore wind turbine generators including foundations; the coordinates of the boundaries within which the Generating Stations will be located are specified in Schedule 1 to the Order and on the Order limits and grid co-ordinates plan submitted with the application;
 - 9.4.2 alternating current (AC) inter-array cabling between the offshore wind turbine generators, meteorological stations and offshore platforms and cabling between the offshore platforms;
 - 9.4.3 up to eight offshore collector platforms and up to two offshore AC to direct current (DC) converter platforms, including foundations; and
 - 9.4.4 crossing structures at the points where the export and inter-array cables cross existing subsea cables and pipelines.
- 9.5 Government Guidance⁴ states that a single application for development consent can cover more than one NSIP and encourages applicants as far as possible to make a single application where developments are clearly linked. It is considered that this is clearly the case in respect of these wind farms.
- 9.6 The Order authorises two separate NSIP wind farms: Dogger Bank Teesside A and Dogger Bank Teesside B along with the grid connection for each of these. These wind farms each have separate connection points into the same National Grid substation and follow a parallel alignment due to the synergies between the projects; therefore following discussion with key stakeholders and regulators it was determined at an early stage to combine these two wind farms into one application for development consent order. This was to avoid the need for two separate but virtually identical Environmental Statements and the duplication of statutory consultation, which could cause increased stakeholder workload, stakeholder fatigue and potential for confusion with the public. In addition, a combined application will avoid the potential for separate hearings on identical issues, also saving time and resources for all involved. Finally, this approach was considered appropriate to harmonise consent requirements, again saving time and resources of stakeholders when discharging these schemes and achieving some consistency of construction and operation across both projects.
- 9.7 The two NSIPs are likely to be constructed by different operators, Bizco 2 and Bizco 3, each named as an Undertaker within the Order definitions. Therefore,

⁴ DCLG Guidance, Planning Act 2008: Guidance on associate development applications for major infrastructure projects, April 2013.

for the sake of clarity and transparency for stakeholders, the areas over which each Undertaker will have control both offshore and onshore is shown on the Works Plans through the use of different Works No.s (for example 1A, 2A, 3A etc for Dogger Bank Teesside A (Bizco 2), and 1B, 2B, 3B etc for Dogger Bank Teesside B (Bizco 3)). There are also shared areas identified separately such as the offshore temporary work area for construction (Work No. 2T), joint accesses to the onshore cable route (Work No.s 10A to 10F), the onshore converter station(s) site (Work No. 7), screening landform to the west of the converter station ((Work No. 7L) and some connections works at the existing National Grid substation at Lackenby (Work No. 9). These Work No.s are explicitly referenced as "shared areas" within the Order because equal access to these sites is necessary for both projects. In relation to Work No. 9, the design and exact location for connection works has yet to be finalised with National Grid so an alternative location within Work No. 9 is retained as an option within the Order Limits in which either project may locate their connection works. To explicitly identify the split between the projects, the Works Plans therefore show a centre line down the cable corridor to delineate Work No.s split by A and B. This provides the landowners with certainty on which Undertaker will have the powers and liabilities over that section of their land and the regulators are clear from the consent documents where responsibility for compliance rests and therefore who is responsible for any breach (should one occur).

- 9.8 As the projects will be built by different operators, they may be constructed at different times. The assessment within the Environmental Statement allows for different construction scenarios, as described in Tables 6.1-6.5 of Chapter 5, including building both projects at the same time (concurrent build) or building them sequentially. The worst case scenario in environmental terms was predicted and assessed for each Chapter. To capture these different build scenarios in the Order, and to make sure there is flexibility to build one project independently of the other, each project is split into onshore 'stages' which are defined specifically within the Order. The interpretation in Part 3 Requirements separates the stages by project (Project A and Project B), and also by construction area with the landfall, onshore cable route and access tracks, converter station(s) and National Grid connection works all being identified as different stages.

10. Associated development

- 10.1 Section 115 of the 2008 Act provides that development consent may be granted for both the NSIP for which such consent must be obtained as well as development associated with the NSIP.

- 10.2 Guidance on associated development has been issued by the Secretary of State for Communities and Local Government⁵, which describes types of development that may qualify as associated development. This guidance requires that associated development "*should not be an aim in itself but should be subordinate to the principal development*" and it requires a direct relationship between associated development and the principal development. In particular, it states that associated development may include measures which help address the impacts of the development.
- 10.3 The Order seeks authorisation for the following development, which is referred to as associated development throughout the application documentation:
- 10.3.1 Direct Current (DC) subsea export cable system from the offshore converter platforms to the landfall site. The location of this route has been informed by various technical and environmental constraints as described further in the Planning and Design Statement (**Application reference 8.1**) and Chapter 6 of the Environmental Statement (**Application reference 6.6**);
 - 10.3.2 underground jointing chamber(s) for onshore cables located at the landfall site (known as the landfall transition joint bay(s)) where the subsea export cables come ashore and join to the onshore cables;
 - 10.3.3 underground onshore DC export cable system which runs for approximately 7km from the landfall transition joint bay(s) to the onshore DC to AC converter station(s);
 - 10.3.4 up to two onshore DC to AC converter station(s) which could be up to 20m in height for the valve hall (excluding lightning protection) and will require a combined permanent land take within Work No. 7 with additional land required for mitigation such as landscaping (Work No. 7L). The detailed elements of Work No. 7 are not fixed and will be the subject of details to be submitted to the Redcar & Cleveland Borough Council for approval post-consent, along with the approval of a landscaping scheme for Work No. 7L to mitigate the visual impacts;
 - 10.3.5 AC underground cables for approximately 2km from the onshore converter station(s) to National Grid's existing substation at Lackenby;
 - 10.3.6 offshore operations and maintenance infrastructure;
 - 10.3.7 onshore infrastructure including means of access, temporary construction compounds and landscaping; and

⁵ Guidance on associated development applications for major infrastructure projects, April 2013.

10.3.8 permanent moorings, navigational buoys and scour protection measures.

- 10.4 The Company recognises that some of the development proposed is likely to constitute associated development within the meaning of section 115(2) of the 2008 Act, rather than part of the NSIP itself. However, in some cases the distinction is less clear, with accommodation or helicopter platforms being an example of this. In any event, the Company is confident that all elements of the proposed development either constitute part of the NSIP or are “associated development” within the meaning of section 115(2).
- 10.5 Section 115(2) of the 2008 Act is clear that associated development does not include the construction or extension of one or more dwellings. A dwelling house has a well-established meaning in planning legislation and the term ‘dwelling’ ordinarily affords the facilities required for day to day private domestic existence (see *Moore v Secretary of State for the Environment*, 1998⁶). The accommodation or helicopter platforms that are proposed within the draft Order solely incorporate accommodation for staff during the construction, operation and decommissioning of the offshore works. As such, they fall within the scope of associated development under section 115 of the 2008 Act as the proposed workers’ accommodation is similar to a hostel with its single rooms supported by catering and other facilities elsewhere on site. Quite clearly these facilities do not provide the facilities required for day-to-day private domestic existence (see *R(Innovia Cellophane Ltd and another) v NNB Generation Company Ltd*, 2011⁷).
- 10.6 The Order also seeks consent for highway works at the following locations, which are set out in Schedules 2 and 4 of the draft Order. The Company considers all of these works would constitute associated development.

Streets subject to works (Article 12 and Schedule 2)

Area	Street subject to street works
Redcar and Cleveland	Coast Road (A1085)
Redcar and Cleveland	National Cycle Network Route 1
Redcar and Cleveland	Green Lane
Redcar and Cleveland	Public Byway (116/19/1)
Redcar and Cleveland	Redcar Road
Redcar and Cleveland	Cat Flatt Lane
Redcar and Cleveland	Public footpath (129/29/1)
Redcar and Cleveland	Public footpath (129/30/1)

⁶ 77 P&OR 114

⁷ EWHC 2883

Redcar and Cleveland	A174
Redcar and Cleveland	Grewgrass Lane
Redcar and Cleveland	Grewgrass Lane (Stewardship bridleway)
Redcar and Cleveland	Fishponds Road (B1269)
Redcar and Cleveland	Public footpath (106/190/1)
Redcar and Cleveland	Greystone Road (A1053)
Redcar and Cleveland	Public footpath (102/193/2)
Redcar and Cleveland	Public footpath (102/54/1)
Redcar and Cleveland	Public footpath (102/194/1)
Redcar and Cleveland	Coast Road (A1085)
Redcar and Cleveland	National Cycle Network Route 1
Redcar and Cleveland	Green Lane
Redcar and Cleveland	Public Byway (116/19/1)
Redcar and Cleveland	Redcar Road
Redcar and Cleveland	Cat Flatt Lane
Redcar and Cleveland	Public footpath (129/29/1)

Access to works to be constructed from the highway (Article 14 and Schedule 3)

Area	Streets to be temporarily stopped up
Redcar and Cleveland	Cat Flatt Lane
Redcar and Cleveland	Public footpath (129/29/1)
Redcar and Cleveland	Public footpath (129/30/1)

11. Ancillary Powers

- 11.1 The Order seeks a number of powers ancillary to the carrying out of above development, all of which fall within the scope of the Part I of Schedule 5 to the 2008 Act.
- 11.2 In particular, the Order seeks to confer powers upon the Undertaker to acquire land and rights compulsorily or by agreement in accordance with sections 120(4) and 122 of, and Schedule 5 to, the 2008 Act. A justification for these powers is set out in full in the Statement of Reasons **(Application reference 4.2)** accompanying the Application.

12. Consents prescribed under section 150 of the 2008 Act

- 12.1 Section 150 of the 2008 Act confines the power conferred by section 120(5)(a) which would otherwise enable provisions to be included in the Order the effect of which is to override the requirement for consent which may be required under another enactment. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010⁸ identifies a number of consents and authorisations which are prescribed for the purposes of section 150 of the 2008 Act in respect of England and Wales. The 'Consents and licences required under other legislation document' (**Application reference 5.4**) accompanying the application lists out the consents relevant to this application.

13. The Deemed Marine Licence

- 13.1 Included within the draft Order at Schedule 7 are four deemed Marine Licences, as provided for in section 149A of the 2008 Act which is an amendment brought forward by the Marine and Coastal Access Act 2009 ("the 2009 Act"). This states that the Order may include a provision deeming a Marine Licence, subject to conditions, to have been issued under Part 4 of the Marine and Coastal Access Act 2009 (marine licensing) for any activity.
- 13.2 The model provisions do not provide a draft deemed Marine Licence and simply refer to the Food and Environmental Protection Act 1985 and the Coast Protection Act 1949, and the licensing provisions under this legislation have been replaced by the marine licensing regime under the 2009 Act.
- 13.3 The draft licences have been prepared in a structure and style which reflects the main part of the Order, with conditions attached to each licence to distinguish them from the requirements in the main Order. The licence is deliberately drafted to be a stand-alone document to reflect the fact that it will have a wide distribution post-consent and this ensures any potential variations to the licences are easier to implement. Therefore the repetition of definitions, descriptions and conditions is inevitable and intentional.
- 13.4 Therefore, the licences require a suite of programmes, statements, plans, protocols and schemes which are approved by the MMO pursuant to the licence conditions, after relevant consultation, where most of the substance of the licence will be contained. Licensed activities cannot be commenced until such approvals are obtained and there is a standard requirement to comply with such approved documents unless agreed otherwise in writing.
- 13.5 Section 72 of the 2009 Act contains provisions relating to the transfer of Licences. Subsection (7) provides that a Licence may be transferred to another person and subsection (8) provides that a Licence may only be transferred in

⁸ S.I. 2010/105

accordance with subsection (7). It is understood that the view taken thus far by the MMO is that the power conferred by subsection (7) only authorises a Licence to be transferred in its entirety but not in part.

13.6 As mentioned in paragraph 1.2 above, the project consists of two NSIPs, each consisting of an offshore generating station. Accordingly, the Order makes arrangements for each NSIP to have attached to it a deemed Marine Licence in respect of the generating assets of the development and a separate deemed Marine Licence representing the transmission assets. This reflects the Company's understanding of the approach of the Government towards the Offshore Transmission Regulatory Frameworks as described in Section 5 above. Accordingly provision is made in the Order for the granting of four deemed Marine Licences as follows:

- Deemed Marine Licence 1 (Parts 1A and 1B of Schedule 7 to the Order) - Project A array area (generation);
- Deemed Marine Licence 2 (Parts 2A and 2B of Schedule 7 to the Order) - Project B array area (generation);
- Deemed Marine Licence 3 (Parts 3A and 3B of Schedule 7 to the Order) - Project A export cable (transmission assets);
- Deemed Marine Licence 4 (Parts 4A and 4B of Schedule 7 to the Order) - Project B export cable (transmission assets).

13.7 The deemed Marine Licence for the transmission assets (deemed Marine Licences 3 and 4) include the Work No.s for the export cable corridor (Work No.s 2A, 3A, 2B, and 3B) but also cover the Work No.s for the array area (1A and 1B). The reasoning for this is that the cut-off point between the ownership of the generation and transmission assets is the offshore collector platforms. These platforms will be located within the array area but their final location will not be known until the design stage, therefore the deemed Marine Licences for transmission also cover the whole of the array area. The spatial split between the Marine Licences is shown in the 'Indicative spatial extent of Marine Licences' plan and cross-section (**Application references 2.5.1 and 2.5.2**).

13.8 Work No. 2T covers an offshore temporary work area for construction activity around the offshore works. This work is included in each of the deemed Marine Licences and the carrying out of any licenced activities within the area of Work No. 2T by either Bizco 2 or Bizco 3 will be regulated by the terms of the relevant Licence.

14. Transferability of Consents

14.1 For a number of reasons an applicant for a development consent order may need to transfer some (or all) of the benefits and associated liabilities of an Order or Marine Licence to another entity (or entities) after the Order/Marine Licence has

been granted. Benefits and liabilities may need to be divided and/or transferred either:

14.1.1 spatially – a dividing line between the generation and transmission assets or alternatively a split between different parts of the offshore wind farm array; and

14.1.2 temporally – different generation/transmissions assets transferred to different entities at different times in a project lifecycle.

14.2 Since the enactment of the 2008 Act concerns have been expressed over whether development consents or parts thereof can be transferred from a Generator as part of a sale of an offshore generation project. These concerns were recently addressed by Government in a Report published by OFGEM and DECC in March 2012⁹.

14.3 Paragraph 61 of the Report advised that:-

"Whether the relevant transmission infrastructure has been consented through the Electricity Act 1989, the marine licensing regime, the town and country planning regime (for onshore elements) or the Planning Act 2008, the default position is that the benefit of the relevant consent runs with the land".

14.4 Paragraph 62 of the Report went on to say that:-

"The transfer of consents under the Planning Act 2008 is covered by DCLG's Model Planning Condition 5¹⁰, which provides for the benefit of a development consent order to be transferred with the consent of the Secretary of State. There should be no barrier to the transferability of development consents under that Act, provided that the DCO is drafted effectively, and the developer makes clear in submissions to the IPC/Secretary of State the range of possible future transfer scenarios so that these can be properly considered during the examination process and provided for in the final DCO".

14.5 The Company has noted the terms of the Report and in view of the interpretation placed upon Section 72 by the MMO the Company has made provision in article 7 (Benefit of Order) to put beyond doubt that the Undertaker will be able to transfer some or all of the benefit under the Order including terms of the deemed Marine Licences provided for in article 39 of the Order.

14.6 The Company notes that section 120(5) of the 2008 Act expressly states:

⁹ Offshore Transmission Co-ordination Project Conclusions Report.

¹⁰ This article is reproduced as article 8 of the Order.

"(5) An Order granting development consent may –

- (a) apply, modify or exclude a statutory provision which relates to any matter for which provision is made in the Order;*
- (b) make such amendments, repeals or revocations off statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of the Order or in connection with the Order;*
- (c) include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the Order;*
- (d) include incidental, consequential, supplementary, transitional or transitory provisions and savings."*

Section 120(6) of the 2008 Act provides that a statutory provision means "a provision of an act or of an instrument made under an Act".

The Company has sought to modify the provisions of the 2009 Act by making provision in article 8(6) of the Order. This allows an agreement to be made under article 8(1) to include relevant provisions (as defined in article 8(9)) as any of the provisions of the Marine Licences specified in Schedule 7 to the Order. Furthermore article 8(8) excludes the operation of Section 72(7) and (8) of the 2009 Act from any transfer of relevant provisions under an agreement made under article 8(1).

15. The Draft Development Consent Order

15.1 The purpose and effect of the articles to the Order are summarised below.

PART 1

Preliminary

Article 1 (*Citation and commencement*) does not appear in the model provisions. This provides for the citation and commencement of the Order.

Article 2 (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order.

PART 2

Principal Powers

Article 3 (*Development consent etc. granted by the Order*) provides development consent for the authorised development and consent for the ancillary works within the

Order limits, thereby authorising the construction of the authorised project. The “authorised development” is defined in article 2 (Interpretation) of the Order as the development which is described in Part 1 of Schedule 1 to the Order and any other development that is authorised under the Order. Such consent is subject to the requirements attached to the Order as set out in Part 3 of Schedule 1. These are provisions corresponding to planning conditions that would be imposed on the deemed planning permission for development authorised by a consent under section 36 of the 1989 Act. Article 3 adopts general model provision 2, but in addition a new paragraph (2) has been inserted which sets out the commencement timeframe for development. This states that the development for which development consent is granted must be commenced within seven years of the date on which the Order is made. Section 154 of the 2008 Act provides that the development for which development consent is granted must be begun before the end of the prescribed period or such other period (whether longer or shorter than that prescribed) as is specified in the Order granting the consent. Regulation 3(1) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 prescribes the period for the purposes of Section 154 of the 2008 Act as five years. However, the longer period of seven years provided for is required because of the scale and complexity of the project given the inclusion of two NSIPs within the one Order, and the lead in time required for contract award and turbine procurement.

Article 4 (*Maintenance of authorised project*) authorises the Undertaker to maintain the authorised development unless the Order or an agreement made under the Order provides otherwise. This provision follows general model provision 3. The definition of “maintenance” mirrors definitions used in other contexts and the confirmed Galloper Wind Farm Order. This definition remains the subject of debate with the MMO.

Article 5 (*Operation of generating station*) authorises the Undertaker to operate the generating station comprised in the authorised development pursuant to section 140 of the 2008 Act. Article 5(1) is not a model provision but is required in order to satisfy section 140 of the 2008 Act. In addition, article 5(2) has been inserted to take account of matters arising under section 150 of the 2008 Act. Under section 120(5)(a) of the 2008 Act a development consent order may “*apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order*”. Section 150 confines the power conferred by section 120(5)(a) which would otherwise enable provisions to be included in the Order the effect of which is to override the requirement for consent which may be required under another enactment. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010¹¹ identifies a number of consents and authorisations which are prescribed for the purposes of section 150 of the 2008 Act in respect of England and Wales. One of those consents is a licence under section 6 of the Electricity Act 1989.

Article 6 (*Procedure in relation to approvals etc under requirements*) deem the requirements which relates to works landward of mean low water springs, and hence

¹¹ S.I. 2010/105

within the area of the relevant planning authority, as planning conditions under section 72 of the Town and Country Planning Act 1990. The article also modifies the application of that Act to provide for the normal right of appeal in relation to the discharge of a planning condition. This article is not a model provision but is considered prudent to include it to avoid the need for the Secretary of State to have the role of determining detailed approvals post-consent under the relevant onshore requirements, which would otherwise be necessary under the 2008 Act.

Article 7 (*Benefit of order*) section 156 of the 2008 Act provides for a development consent order to have effect for the benefit of the land generally and anyone for the time being interested in the land, except to the extent that the Order provides otherwise (i.e. the same position that applies in respect of a planning permission). This contrasts with the usual position in relation to statutory powers, which is that the benefit of statutory powers extends only to the body on whom they are conferred. Article 7(1) provides for all the articles of the Order conferring power on the Undertaker to apply solely for the benefit of the Undertaker and mirrors general model provision 7.

Article 8 (*Consent to transfer benefit of Order*) makes provision to enable the Undertaker to transfer or grant any or all of the benefit of the provisions of the Order and related statutory rights to another person. The article is required to give effect to the proposals outlined in section 13 above. The related statutory rights referred to in article 8(6) extend to the rights and benefits conferred under the terms of the deemed Marine Licences granted by virtue of article 38 of the Order, but subject to article 8(3).

The Company notes the comments made by the Secretary of State in relation to paragraph 6.4 of the Secretary of State's decision letter for the proposed North Blyth Power Station Order. In particular, that the Secretary of State requires a role in consenting to the transfer of functions, apart from the transfer of compulsory purchase provisions, in order to obtain an oversight of the effectiveness of each of the requirements of the Order and the commitments to be given by an applicant in other respects. Accordingly article 8 has been drafted to retain that degree of oversight save where the transfer takes place in the terms specified in article 8(4).

Article 8(4) and (5) are not general model provisions but have been included in the Order as conditions in relation to the transfer of benefits under article 8(1) of the Order to another person.

Article 8(4) prescribes the characteristics of a transferee or lessee to whom benefits under the Order may be transferred without the consent of the Secretary of State under article 8(1). The transferee or lessee must either be a licence holder under the Electricity Act 1989 or the transfer must take place after the settlement of claims for compensation arising under the national compensation and in respect of the acquisition and use of land under the Order.

Article 8(5) further provides that certain powers of the Order may only be exercised by a person to whom powers to construct particular works are transferred pursuant to an agreement under article 8(1).

Article 9 (*Disapplication and modification of legislative provisions*) this article provides for the disapplication of certain requirements which would otherwise apply under public legislation. This is consistent with section 120(5)(a) of the 2008 Act, which provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.

Paragraph (1) provides for the disapplication of various additional consents which would otherwise be required from the Environment Agency under the Water Resources Act 1991, the Land Drainage Act 1991, and the Hedgerows Regulations 1997¹². These are the requirements for consents for abstraction and impoundment of water, and on placing structures on or over rivers, under the Water Resources Act 1991; the requirements for approval under flood defence and land drainage byelaws made or deemed to be made under the Water Resources Act 1991; the prohibition on placing obstructions in waterways which are not main rivers under the Land Drainage Act 1991; and, the prohibition on destroying or removing certain hedgerows without permission from the local planning authority. These are consents for activities which are a necessary part of the project. Therefore, in order to provide certainty that the project can proceed, the Order disapplies the requirement for additional consents.

Paragraph (3) disapplies section 6 of the Party Wall etc. Act 1996¹³ so removing the need for the Undertaker to issue a notice to an adjoining landowner or to secure the consent of that landowner before carrying out any excavation or erection of a building or structure. The purpose of this paragraph is to avoid works which have been authorised by the Order being held up by the process for making party wall awards under the Party Wall Act and it is based on provisions in the Crossrail Act 2008¹⁴.

Article 10 (*Abatement of works abandoned or decayed*) deals with the situation where the Undertaker has allowed the works below mean high water springs (or in some circumstances above mean high water springs) to fall into disrepair or has abandoned them. The Secretary of State may require the Undertaker to repair them, failing which he or she may do so themselves and recover the expense of doing so from the Undertaker. This article follows model provision 22.

Article 11 (*Defence to proceedings in respect of statutory nuisance*) provides the Undertaker with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990 under the following circumstances:

¹² 1991 c.56, 1991 c.59, and 1997 No.1160.

¹³ 1996 c.40

¹⁴ 2008 c.18

- if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974; or
- that the nuisance complained of is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- that the nuisance is attributable to a use of the authorised project that is in accordance with a scheme of noise mitigation agreed with the relevant planning authority as described in the requirements; or
- that it is a consequence of the use of the authorised project and cannot reasonably be avoided.

This is consistent with the wording of general model provision 7. Further information on the defence against statutory nuisance can be found in the Statement provided for the purposes of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (**Application reference 7.3**).

PART 3

Streets

Article 12 (*Street works*) authorises the Undertaker to interfere with, and execute works in or under streets specified in Schedule 2 to the Order and carry out work in connection with the placing, maintaining or moving of apparatus for the purposes of the authorised development. The wording mirrors model clause 8.

Article 13 (*Temporary stopping up of streets*) provides for the temporary stopping up of streets and is based on general model provision 11. The definition of streets encompasses any public rights of way. Reasonable alternative access must be provided if there would otherwise be no access. In the case of the streets specified in Schedule 3 to the Order, the Undertaker is required to consult the street authority prior to the proposed temporary stopping up. In the case of any other street that may be temporarily stopped up, the street authority is required to give its consent before the street may be stopped up and may attach reasonable conditions to any consent given. Provision is made for the payment of compensation to any person who suffers loss as a result of the suspension of any private right of way under the article (paragraph 5). General model provisions 9 and 10 have not been included in the Order as no streets or other public rights of way will be permanently stopped up under the terms of the Order.

Article 14 (*Access to works*) is based on general model provision 12 and confers power on the Undertaker to provide or improve access at the location specified in Schedule 4 to the Order or, with the consent of the planning authority following consultation with the highway authority, at any other location within the Order limits.

Article 15 (*Agreements with street authorities*) is based on general model provision 13 and authorises the Undertaker to enter into agreements with street authorities relating to the construction of new streets, works in or affecting streets and the stopping up, alteration and diversion of streets authorised under the Order.

PART 4

Supplemental Powers

Article 16 (*Discharge of water*) enables the Undertaker to discharge water into any watercourse, public sewer or drain, in connection with the construction and maintenance of the authorised project with the approval and (if provided) superintendence of the person to whom it belongs (such approval may be subject to reasonable terms and conditions but shall not be unreasonably withheld). In paragraph (7) the wording of general model provision 14 has been updated to refer to the environmental permitting regime introduced by the Environmental Permitting (England and Wales) Regulations 2010¹⁵. Article 16(9) has been inserted to take account of consideration of matters arising under section 150 of the 2008 Act. Under section 120(5)(a) of the 2008 Act a development consent order may "*apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order*". Section 150 confines the power conferred by section 120(5)(a) which would otherwise enable provisions to be included in the Order the effect of which is to override the requirement for consent which may be required under another enactment. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 identifies a number of consents and authorisations which are prescribed for the purposes of section 150 of the 2008 Act in respect of England and Wales. These include consents under the Land Drainage Act 1991¹⁶ and the Water Resources Act 1991¹⁷. The Company understands that separate consent applications will be required in respect of any matters authorised by article 16 that are within the jurisdictional remit of the Agency. Accordingly article 16(9) has been inserted into the Order to exclude from the scope of the article any consents that otherwise have to be obtained directly from the Environment Agency.

Article 17 (*Protective work to buildings*) follows general model provision 15 and would authorise the Undertaker to carry out protective works to any building within the Order limits as defined in that article where it considers it necessary or expedient in advance of, during or up to five years after, the carrying out of any part of the authorised project in the vicinity of the building. The Undertaker may enter the building and land in its curtilage for the purposes of deciding how to exercise its powers. The Undertaker may also enter the building, land within its curtilage or adjacent land to carry out the protective works. The Undertaker must (except in an emergency) give not less than 14 days' notice to owners and occupiers of its intention to exercise the powers. The article provides that the owner of a building may question whether the works are necessary.

¹⁵ S.I. 2010/675

¹⁶ 1991 c.59.

¹⁷ 1991 c.57.

Provision is made for the payment of compensation in relation to loss or damage caused by the Undertaker in carrying out the protective works and where, within 5 years, the protective works appear to have been inadequate.

Article 18 (*Authority to survey and investigate the land*) is based on general model provision 16 and confers on the Undertaker a power to enter land for the purposes of surveying or investigating it, making trial holes, carry out ecological or archaeological investigations and to place and leave apparatus on the land subject to giving the owner of the land at least 14 days notice. Provision is made for the payment of compensation.

Article 19 (*Removal of human remains*) requires the Undertaker, before it carries out any development or works which will or may disturb any remains, to remove those remains. Before removing any human remains, the Undertaker is required to publish notice of its intention to do so. Notice is also required to be displayed near the site and a copy of the notice sent to the local authority. Any relative or personal representative of any deceased person whose remains are proposed to be removed may undertake the removal of the remains themselves and arrange for those remains to be re-interred or cremated, the Undertaker being responsible for the reasonable costs in doing so. In the event that such relative or personal representative does not remove the remains, the Undertaker is required to comply with any reasonable request the relative or personal representative may make in relation to the removal and re-interment or cremation of the remains. Any dispute which may arise as to whether a person is the relative or personal representative of the person whose remains are proposed to be removed or as to the identity of the remains in question is to be determined in the county court. The Undertaker is required to certify to the Registrar General the date of re-interment or cremation and the place from which the remains were removed and the place where the remains were re-interred or cremated. A copy of the certificate is required to be sent to the local authority. The removal of any remains by the Undertaker is required to be carried out in accordance with any directions which may be given by the Secretary of State. Article 19 follows general model provision 17.

PART 5

Powers of Acquisition

Article 20 (*Compulsory acquisition of land*) would authorise the compulsory acquisition of land shown on the land plan (**Application reference 2.3.2**) and described in the Book of Reference (**Application reference 4.3**) so far as is required for the authorised project or to facilitate or is incidental to it. This article also makes provision for the extinguishment of rights, trusts and incidents to which the land was previously subject to. Provision is made for the payment of compensation. The powers of acquisition are conferred equally upon Bizco 2 (article 20(1)) and Bizco 3 (article 20(2)). A detailed explanation of the powers being sought is contained in the Statement of Reasons (**Application reference 4.2**).

Article 21 (*Compulsory acquisition of land – incorporation of the mineral code*) is based on general model provision 19 and provides for the incorporation of the Statutory Minerals Code ("Code") set out at Schedule 2 of the Acquisition of Land Act 1981 to be incorporated into the Order.

Article 22 (*Time limit for exercise of authority to acquire land compulsorily*) gives the Undertaker seven years to issue 'notices to treat' or a 'general vesting declaration' to acquire the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of acquiring land is undertaken should the Order be made. Section 154(3) of the 2008 Act provides that where an order granting development consent authorises the compulsory acquisition of land, steps of a prescribed description must be taken in relation to the compulsory acquisition before the end of the prescribed period or such other period (whether longer or shorter than that prescribed) as is specified in the Order. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 prescribes the period for the purposes of s.154(3) for the service of a notice to treat as 5 years from the date on which the Order granting development is made. Notice to treat is the only step of a prescribed description referred to in Regulation 3(2) and general vesting declaration is not referred to. The longer period of seven years provided for under article 22 is required because of the scale and complexity of the works, and the lead in time required for contract award and turbine procurement.

Article 23 (*Compulsory acquisition of rights*) enables the Undertaker to acquire rights by the creation of new rights. Paragraph (2) departs from the general model provisions in providing that in the case of the Order land specified in Schedule 5 (land in which only new rights etc. may be required) the Undertaker's compulsory powers are limited to the acquisition of such new rights as may be required for the purposes specified in relation to that land in column (2) of Schedule 5. A similar provision was included in the Network Rail (Nuneaton North Chord) Order 2010. Paragraph (4) provides that the Undertaker may not be compelled to acquire a greater interest in the land. Provision is made for the payment of compensation to anyone who suffers loss by the exercise of the powers conferred under the article. Paragraphs (2), (3) and (4) depart from the general model provisions in providing that in the case of the lands specified in Parts 1, 2 and 3 of Schedule 5, rights may only be exercised for specified purposes. In particular articles 23(3) and (4) have been drafted to facilitate the exercise by both Bizco 2 and Bizco 3 of powers to acquire rights in circumstances where rights over land identified in Part 2 and Schedule 5 may be required by Bizco 2 for the purposes of the construction of part of the Project A Onshore Works but that this will involve an impact on part of the cable corridor forming part of the Project B Onshore Works. Accordingly the provision requires the consent of Bizco 3 to that right being exercised. Article 23(4) contains corresponding provisions for the benefit of Bizco 3 over the Project A Onshore Works bearing in mind the conditions specified in Part 3 of Schedule 5. The relationship between Bizco 2 and Bizco 3 to initiate the construction of the Works will be regulated by an agreement entered into under article 34 (Power to Make Agreements). Further information and

details on the rights being acquired is set out in the Statement of Reasons (**Application reference: 4.2**).

Article 24 (*Private rights of way*) extinguishes any private rights of way across land being acquired compulsorily from the time that it is taken possession of, or, if it is being occupied temporarily, suspends such rights for the duration of the temporary occupation. Compensation is payable to anyone who suffers loss from such an extinguishment. The general provision may also be varied in individual cases.

Article 25 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) applies the provisions of the 1981 Act to compulsory acquisition under the Order. Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of a notice to treat). They allow title in the land to pass to the acquirer more quickly than using the notice to treat method, and also allow several parcels to be acquired at once. The article is identical to general model provision 23.

Article 26 (*Rights under or over streets*) allows the Undertaker to occupy land above or below streets within the Order limits without having to acquire the land. If there are any structures below the street then compensation is payable for any loss or damage. The article is identical to general model provision 27.

Article 27 (*Temporary use of land for carrying out the authorised project*) allows the land coloured blue on the Land Plan (**Application reference 2.3.2**) to be occupied temporarily while the works are carried out, and also any of the land for permanent acquisition (i.e. coloured pink) that has not yet been taken possession of. The article is the same as general model provision 28 except that in paragraph (5), the words 'the provisions of' have been deleted.

Article 28 (*Temporary use of land for maintaining authorised project*) allows land within the Order limits (that has not been acquired) to be entered onto during a five year period after the works are complete for maintenance purposes. Houses or occupied buildings cannot be entered into under this provision, 28 days' notice must be given, and compensation must be paid for any loss or damage. The article is identical to general model provision 29.

Article 29 (*Statutory undertakers*) is modelled on general model provision 31 and allows the Undertaker to acquire land shown on the land plan and described in the Book of Reference (**Application reference 4.3**) that belongs to statutory undertakers, and to extinguish rights in apparatus or remove or reposition apparatus. It is subject to the protective provisions set out in article 42 of, and Schedule 8 to, the Order (for Protective Provisions).

Article 30 (*Recovery of costs of new connections*) provides for the payment of compensation to owners or occupiers of property where apparatus has been removed under the powers conferred on the Undertaker by article 29 and is identical to general model provision 33.

Article 31 (*Application of landlord and tenant law*) overrides the application of landlord and tenant law insofar as it may prejudice agreements for the operation etc., of the authorised project. Article 31 follows general model provision 35.

Article 32 (*Special category land*) – under Section 132 of the 2008 Act an order granting development consent is subject to Special Parliamentary Procedure when it authorises compulsory acquisition of a right over land to which Section 132 applies. The exception is if the Secretary of State is satisfied that certain tests under Section 132(2) are met. Land specified in article 32(3) may be released from all rights, trusts and incidents to which that land was previously subject without the requirement for the undertaker to provide replacement land in accordance with Section 132(2) of the 2008 Act. Under Section 132 of the 2008 Act, as amended by section 24 of the Growth and Infrastructure Act 2013, an order granting development consent shall not be subject to Special Parliamentary Procedure if the Secretary of State is satisfied that the special category land when burdened with the order rights will be no less advantageous to affected persons than it was before the imposition of the order rights. Under the terms of the Order an area of land, part of the foreshore near landfall of the offshore cables, forms a special category of land subject to protection under Section 132 of the 2008 Act. Further justification on this is provided within the Statement of Reasons (**Application reference 4.2**), which explains that the Company considers the rights proposed to be acquired over the area of special category land identified is of limited impact, and as a result the Company considers that the Secretary of State can so be satisfied that the order shall not be subject to Special Parliamentary Procedure.

Article 33 (*Power to make agreements*) – article 33 is distinct from article 7 (Benefit of Order) in that it makes provision for of the Undertaker to facilitate the optimum contracting mechanism in order to deliver the benefits identified in Section 5 above and the introduction of a competitive framework for securing of licences build, own and operate offshore generation and transmission assets. The Order confers powers upon the Undertaker, which is defined in article 2 as being Bizco 2 in respect of the Project A Offshore Works and the Project A Onshore Works, and Bizco 3 in relation to the Project B Offshore Works and the Project B Onshore Works and in relation to the shared works Bizco 2 or Bizco 3. Article 20 (Compulsory Acquisition of Land) mirrors this distinction. Article 34 enables Bizco 2 and Bizco 3 to enter into agreements with each other to ensure that the construction and operation of the Works are carried out as efficiently as possible and reflects the fact that the construction of two projects in very close proximity to one another will require close co-operation between Bizco 2 and Bizco 3. Accordingly, article 33 facilitates the entry by Bizco 2 and Bizco 3 into agreements where powers may be exercised by either party or jointly. This is particularly important given the requirements for close working between the cable corridors and the fact there are a number of shared works (Works No.s 2T, 7, 7L, 9 and Works No.s 10A to 10J). Article 33(3) is required to ensure that agreements entered into under article 33 will be subject to all of the provisions that would apply if the powers being exercised under an agreement were exercised by either Bizco 2 or Bizco 3 alone. Article 33(4) recognises that it will be necessary for Bizco 2 and Bizco 3 to have access to each other's land required for the

Project A Offshore and Onshore Works and the Project B Offshore and Onshore Works to enable each Bizco to construct its respective works, and article 33(4) is intended to facilitate that.

Article 33(7) provides that Bizco 2 and Bizco 3 may enter into agreements for the permanent vesting of land, works and statutory powers in relation to the works authorised by the Order and land required for those works.

This is not a model provision, but has been included within the Order for the public benefit in order to provide clarity and comfort in relation to the way the two companies will operate together. The article effectively fetters unlimited commercial agreements and ensures that this is carried out in a transparent manner.

Article 34 (*Railway and navigation undertakings*) is the same as general model provision 34 and requires the consent of a railway or navigation undertaking to break up any street in their control or to interfere with any level crossing, except in an emergency, although the Order does not seek powers that will affect any level crossing.

PART 6

Miscellaneous and General

Article 35 (*Trees subject to tree preservation orders*) provides for the Undertaker to fell and top trees that are subject of tree preservation order and is in the same form as general model clause 40. An area which is subject to this designation has been identified just within the Order limits, so a specific plan has been produced. This article has also been included to deal with trees which may be designated prior to construction of the development, given the timescales involved.

Article 36 (*Operational Land for purposes of the 1990 Act*) provides that for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990¹⁸ ("cases in which land is to be treated as operational land for the purposes of that Act"), the development consent granted by the Order shall be treated as specific planning permission. The purpose of this is to ensure that permitted development rights under Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995¹⁹ will apply in relation to the onshore works authorised by the Order. This article follows model provision 36.

Article 37 (*Felling or lopping of trees*) enables the Undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised project. Provision is made for the payment of compensation to any person who suffers loss as a result of the exercise of the powers granted by the article. Article 38 follows general model provision 39.

¹⁸ 1990 c.8.

¹⁹ S.I. 1995/418

Article 38 (*Deemed licences under the Marine and Coastal Access Act 2009*) deems the granting of Marine Licences, which is a licence to deposit or build on the sea bed below mean high water springs in respect of each of the NSIPs proposed to be authorised as part of the project. Under the Marine and Coastal Access Act 2009, since 1 April 2011 the two previous permissions of a consent under section 34 of the Coast Protection Act 1949 and a licence under Part 3 of the Environment Protection Act 1990 have been combined into a single 'Marine Licence'. The drafting of the article reflects the combining of the model provisions for the two previous permissions into the single new permission. Schedule 7 contains the terms applicable to all four licences and the conditions attached to each of them in respect of the works as defined in article 2 of the Order. Further detail on the deemed Marine Licences is provided in section 12 of this document.

Article 39 (*Saving for Trinity House*) provides that the rights and duties of Trinity House, the General Lighthouse Authority, are unaffected by the Order. It is in the same form as model provision 53.

Article 40 (*Crown Rights*) provides a saving for Crown Land. The wording of this article has been agreed with the Crown Estate prior to submission.

Article 41 (*Certification of plans and documents etc.*) requires the Company to submit the Book of Reference (**Application reference 4.3**), the plans, the Environmental Statement and any other documents referred to in the Order to the Secretary of State for certification after the making of the Order. This article follows general model provision 41 with amendments relating to the documents specific to this projects.

Article 42 (*Protective provisions*) this article applies Schedule 8 to the Order containing provisions for the protection of the bodies specified in Parts 1 to 4 of that Schedule consequent on the operation of the articles contained in the Order. This includes provisions for statutory undertakers, Network Rail infrastructure, electronic communications code networks and offshore cables and pipelines.

Article 43 (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration. This article is based on general model provision 42.

SCHEDULES

Schedule 1 (*Part 1 (Authorised Project)*) describes the authorised project comprising the authorised development by reference to Work No.s shown on the offshore and onshore works plans (**Application references: 2.4.1 and 2.4.2**).

Schedule 1 (*Part 2 (Ancillary Works)*) identifies a number of ancillary works for which development consent is conferred.

Schedule 1 (*Part 3 (Requirements)*) sets out certain requirements that the Undertaker must meet in relation to the construction and operation of the authorised project. These

requirements take a similar form to planning conditions. The requirements are based upon the Model Requirements contained in Schedule 4 to the 2009 Order, however they do depart in respect of various project and site specific aspects and to reflect the nature of the development. The model requirements are generic and they are intended to address a wide range of potential development schemes, therefore some of the model requirements are not relevant to the project and have been omitted.

A commentary on the proposed requirements is set out below.

Commentary on Requirements

Requirement 1 - (Interpretation) provides for the interpretation of words and phrases used in Schedule 1 Part 2 (Requirements).

Requirement 2 - (Time Limits) specifies the time limit for commencing the authorised development as the period of seven years from the date of the Order. Section 154 of the 2008 Act provides that the development for which development consent is granted must be begun before the end of the prescribed period or such other period (whether longer or shorter than that prescribed) as is specified in the Order granting the consent. Regulation 3(1) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 prescribes the period for the purposes of Section 154 of the 2008 Act as 5 years. The longer period of seven years provided for is required because of the scale and complexity of the works given the inclusion of two NSIPs within the one Order, and the lead in time required for contract award and turbine procurement.

Requirements 3 to 6 (Detailed offshore design parameters) set out a number of design parameters within which the authorised development may be constructed. Requirement 3 addresses the overall cumulative footprint on the seabed. Requirement 4 addresses the physical characteristics and dimensions of wind turbine generators, spacing requirements and the total rotor swept area for Project A and Project B. This also restricts the foundations of wind turbine generators in line with the parameters used in the environmental assessment. Requirement 5 limits the number and dimensions of offshore platforms and their foundations. Requirement 6 restricts the construction of offshore cables within the Order limits, including their length and quantity and this requirement also captures a commitment to limit the cable protection. The purpose of these restrictions is to ensure that the authorised development is consistent with the assessment made in the Environmental Statement of the impacts associated with different structures and foundation types and dimensions and the associated mitigation.

Requirement 7 (Layout Rules) provides for the general arrangements for the layout of the turbines comprised within Works No.s 1A and 1B to be in accordance with the parameters provided in requirement 4 and section 5.2 of Chapter 5 of the Environmental Statement (**Application reference 6.5**), and agreed with the MMO. This does not follow the model provisions but has been proposed following consultation to reassure other marine users that commitments made in relation to the final design and layout of

wind turbine generators and offshore platforms will be secured and in accordance with the design rules previously discussed.

Requirement 8 (Aviation lighting) makes provision for suitable mitigation to be put in place to safeguard air traffic control services and the operation of aircraft in the vicinity of the project during the lifetime of the authorised development.

Requirement 9 (Offshore Decommissioning) makes provision for agreement to a written decommissioning programme for offshore works which must be put in place prior to the commencement of operation of the offshore works. This is not a model provision but is proposed to ensure compliance with the Energy Act 2004.

Requirement 10 (Offshore safety management) requires the agreement of an Emergency Response and Co-operation Plan before commencement of offshore works, to be given effect once approved. This is a provision that is precededented from previous Electricity Act consents for offshore wind farms with some minor modifications included within the wording as requested by the Marine Coastguard Agency.

Requirements 11 to 15 (Aids to navigation) provide for a number of matters to assist navigation in the vicinity of the authorised development. This includes the provision of aids to navigation and notice to mariners, notification of the progress of works to Trinity House and the UK Hydrographic Office, and the marking of structures. These provisions are consistent with precededented arrangements contained in consents granted under the Electricity Act 1989 for offshore wind farms. Requirement 15 is in accordance with the requirements of the Air Navigation Order 2005.

Requirement 16 (Provision against danger to navigation) requires notice to be given Trinity House if the authorised development falls into disrepair.

Requirement 17 (Stages of authorised development onshore) provides for a written scheme for each stage of the onshore works to be approved in writing by the local planning authority prior to commencement of any of those works and for the works to be carried out in accordance with the approved scheme. Paragraph 8.8 of this document provides further detail on the rationale for splitting the projects into stages.

Requirements 18 and 19 (Detailed design approval onshore) broadly follow the model provisions in requiring approved details post-consent save where details are already contained in plans certified under the Order. Any works to be approved by the relevant planning authority, Redcar & Cleveland Borough Council, are to be in accordance with the approved plans. Requirement 19(2) also includes specific restrictions on the height of the converter station(s) to reflect the basis of assessment in the Environmental Statement and to minimise the impact on visual and landscape arising from onshore works.

Requirement 20 (Provision of landscaping) requires a landscaping scheme to be submitted for approval and approved by the relevant planning authority before the

relevant stage of the onshore works may commence. This follows the provisions within model requirement 7.

Requirement 21 (Implementation and maintenance of landscaping) requires implementation of the approved landscaping scheme referred to in Requirement 20 above and the replacement of trees and shrubs which die within five years of planting. This follows the provisions within model requirement 8.

Requirement 22 (Fencing and other means of enclosure) provides temporary and permanent fencing and other means of enclosure shall be approved before the connection works commence. The construction work shall be securely fenced, temporary fencing removed after completion of the works and the perimeter fencing around Work No. 7 (the onshore converter station(s)) must be in place before it is first used. This requirement is consistent with model requirement 13.

Requirement 23 (Highway Accesses) requires submission for approval by the relevant planning authority of details of any new means of vehicular access to a highway, or for any alteration to any such existing means of access. Compliance with the details is also secured by this requirement. Requirement 23 departs from the model requirement 10 by not requiring an access management scheme. This is because management of construction traffic will be dealt with through the medium of the construction traffic routing and management plan referred to in requirement 33.

Requirement 24 (Surface and foul water drainage) provides that the relevant stage of the onshore works shall not be commenced until details of the surface and foul water drainage systems for that stage have been approved by the relevant planning authority in consultation with the relevant sewage and drainage authority. This wording is consistent with model requirement 14.

Requirement 25 (Archaeology) provides that the onshore works relevant to each stage shall not commence until a written scheme of investigation has been agreed with the relevant planning authority. This follows the principles set out in model requirement 16.

Requirement 26 (Code of Construction Practice (CoCP) and Construction Environment Management Plan (CEMPS)) provides that the onshore works shall not commence until a code of construction practice has been submitted and approved by the relevant planning authority. The code covers a number of construction related matters and shall be implemented as approved unless otherwise agreed. Subsequently each stage of the works must produce their own Construction Environment Management Plan drafted in accordance with the CoCP, which provide additional detail on each specific construction phase. In accordance with model requirement 19 the requirement lists out the specific matters to be included within the CoCP, with further detail provided within the Outline Code of Construction Practice submitted with the application (**Application reference 8.2**)

Requirement 27 (Construction hours) provides for the onshore construction hours on specified days, with none on Sundays or bank holidays with the exception of certain continuous operations, internal fit out, delivery of abnormal loads, works on the foreshore or works required to be carried out in an emergency, which must be agreed with the planning authority in advance. This follows the principles in model requirement 24, albeit with slightly amended working hours to reflect the parameters assessed in the Environmental Statement and the complexities of construction for a project of this scale.

Requirement 28 (control of noise during operational phase) specifies noise limits and operational noise arising from Work No. 7 (the onshore converter station(s)) and the specified locations for measuring the noise. The noise management scheme proposed in model requirement 25 was not considered appropriate for this development, as only a limited number of receptors are affected by operational noise. Instead a fixed noise limit at relevant properties was considered to be simpler, and easier to measure and enforce.

Requirement 29 (Control of artificial light emissions) provides for written details of external lighting proposed to be used for the construction of the onshore works to be submitted and approved by the relevant planning authority. The requirement also requires that Work No. 7 (the onshore converter station(s)) are not brought into operation until a written scheme for the management and mitigation of artificial light during the operation of those works has been submitted to and approved by the local planning authority. This is consistent with model requirement 27, except for the requirement for separate schemes relating to the construction and operation phases of the development.

Requirement 30 (Construction traffic routing and management plan) provides that no stage of the onshore works may commence until written details of a construction phase traffic management plan for the management of construction traffic has been submitted to and approved by the relevant planning authority. This reflects model requirement 22 with the addition of text in paragraph (2) relating to abnormal indivisible loads, which are a distinguishing element of offshore wind farm construction traffic.

Requirement 31 (European protected species) provides that the relevant stage of the onshore works shall not be commenced until a pre-construction survey for that station has been carried out to establish whether any European protected species is present, or likely to be impacted by the works. If so the scheme for protection and mitigation must be approved by the local planning authority before that relevant stage of the works is commenced and any such scheme must be implemented as approved unless otherwise agreed with the local planning authority. This mirrors model requirement 34.

Requirement 32 (Restoration of land used temporarily for construction) provides that any land which is landward mean low water springs and which is used temporarily for the onshore works must be restored to its prior condition or such condition as the relevant planning authority shall approve. This restoration must be carried out within six months of the completion of the onshore works. This generally conforms with model

requirement 35, although reference to the onshore works has been added and the approval of reinstatement has been amended from the Commission to the local planning authority.

Requirement 33 (Interference with telecommunications) provides for a scheme to be submitted to the relevant planning authority in the event of any interference with telecommunications or television equipment arising from the operation of the onshore works. Such a scheme must be carried out in accordance with the approved details, unless otherwise agreed in writing by the relevant planning authority.

Requirement 34 (Onshore decommissioning) makes provision for a scheme for demolition and removal of the onshore works or any part of them on cessation of commercial operations together with proposals for reinstatement of the surface of the land following decommissioning. The proposed scheme will be based upon the onshore element of the decommissioning statement submitted with the application (**Application reference 8.3**) and the scheme must be carried out in accordance with the approved details, unless otherwise agreed by the relevant planning authority.

Requirements numbered 17 to 34 relate to works landward of mean low water springs.

Requirement 35 (Requirement for written approval) provides that where a requirement requires the approval of the Secretary of State, the relevant planning authority or some other person then such approval must be in writing. This is consistent with model requirement 36.

Requirement 36 (Amendments to approved details)

Requirement 36 (*Amendment to approved details*) applies to all of the authorised development and provides for any details approved pursuant to any requirement should be taken to include any amended details which are subsequently approved. This is consistent with model requirement 37.

Requirement 37 (Restricted Work Area)

Requirement 37 (*Restricted Work Area*) applies to all of the offshore authorised development and provides that its construction cannot take place within the restricted work area which has been identified on the offshore works plans. This is not a model provision but it is proposed so as to ensure that no works cross the UK international boundary.

Schedule 2 (Streets subject to street works) sets out those streets which are subject to street works in accordance with article 12.

Schedule 3 (Streets to be temporarily stopped up) identifies the streets, including public rights of way, which may be temporarily stopped up in accordance with article 13.

Schedule 4 (Access to works) sets out the locations where new forms of vehicular access may be created or where such access may be improved in accordance with article 14.

Schedule 5 (Land in which only new rights etc maybe acquired) sets out those lands which are to be subject to the provisions of article 23 of the Order. Article 23 confers power upon the Undertaker to acquire rights over land or extinguish rights over land and in the case of the land specified in Schedule 5 may only exercise the powers of compulsory purchase for the purposes of creating specific rights over land identified in Parts 1, 2 and 3 of the Schedule.

Schedule 6 (Land of which temporary possession may be taken) identifies the plots of land which are proposed to be subject to powers of temporary acquisition for the purpose of carrying out the authorised development conferred under article 28 of the Order.

Schedule 7 (Deemed licences under the Marine and Coastal Access Act 2009) sets out the provisions of the deemed Marine Licences granted by the Order. The general model provisions do not provide a draft deemed Marine Licence and simply refer to the Food and Environmental Protection Act 1985 and the Coastal Protection Act 1949. The licensing provisions under this legislation have been superseded by the marine licensing regime under the Marine and Coastal Access Act 2009 ("the 2009 Act"). The draft licences conditions have been the subject of discussion between the Company and the MMO. Further detail on the structure and reasoning behind the proposed Marine Licences is provided in section 12 of this document.

Schedule 8 (Protective Provisions) contains a number of protective provisions for the benefit of a number of statutory bodies. All of the provisions are based upon recent precedents. The provisions confer protection upon electricity, gas and water undertakers (Part 1), Network Rail Infrastructure Limited (Part 2), operations of electronic communications code networks (Part 3), and owners and operators of offshore cables and pipelines (Part 4).

Deemed Marine Licence 1

Part 1A – (Licensed Marine Activities)

Paragraph 1 (Interpretation) provides an interpretation of certain words and phrases used in respect of the licence for the Project A Offshore works and the contact details of the primary point of contact with relevant organisations including the MMO.

Paragraph 2 (Details of licensed marine activities) describes the project and specifies the licensable marine activities which are authorised by the licence in connection with the construction and operation of the Project A Offshore works.

Part 1B (Licence Conditions)

Paragraphs 3 and 4 (Detailed offshore design parameters) set out the detailed offshore design parameters of the Project A Offshore works and repeats the detailed design parameters from requirements 3 to 6 of Part 3 of Schedule 1 to the Order. It was normal for FEPA licences to include a condition specifying the design limitations which were repeated from the associated Electricity Act 1989 consent.

Paragraph 5 (Layout rules) provides for the general arrangements for the layout of the turbines comprised within Work No. 1A to be in accordance with the parameters provided in requirement 3 and section 5.2 of Chapter 5 of the Environmental Statement. The condition also requires the layout to be agreed with the MMO.

Paragraph 6 (Notifications and inspections) provides for a system of providing copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO, and publicising commencement and progress of the licensed activities.

Paragraph 7 (Chemicals, drilling and debris) restricts the use of chemicals and other substances, the disposal of certain drilling arisings, and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.

Paragraph 8 (Force majeure) provides for the notification of deposits made in an emergency. This only refers to authorised deposits outside the Order limits because deposits within the Order limits would already be authorised.

Paragraphs 9 and 10 (Pre-construction plans and documentation) provides for the submission for approval by the MMO, before the commencement of licensed activities, of: the location and dimensions of wind turbine generators and offshore platforms, a construction and monitoring programme, a construction method statement, a project environmental management and monitoring plan, a marine mammal mitigation protocol (where appropriate), a cable specification and installation plan, and a scheme of archaeological investigation. Each plan must be submitted to the MMO at least four months prior to construction.

Paragraph 11 (Reporting of engaged agents, contractors and vessels) requires the Undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities, and a weekly update as to which vessels are being used during construction.

Paragraph 12 (Equipment and operation of vessels engaged in licensed activities) specifies various equipment and other conditions which vessels used for the licensed activities must be fitted with and comply with.

Paragraph 13 (Pre-construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for preconstruction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

Paragraph 14 (Construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results and allows the MMO to prevent the use of pile installation in certain circumstances.

Paragraphs 15 and 16 (Post construction surveys) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for post construction surveys/monitoring, and provides an indicative list of the expected post-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval. In addition condition 16 requires a maintenance plan to be submitted in relation to the operational phase of the development, in response to a request by the MMO.

Deemed Marine Licence 2

Part 2A – (Licensed Marine Activities)

Paragraph 1 (Interpretation) provides an interpretation of certain words and phrases used in respect of the licence for the Project B Offshore works and the contact details of the primary point of contact with relevant organisations including the MMO.

Paragraph 2 (Details of licensed marine activities) describes the project and specifies the licensable marine activities which are authorised by the licence in connection with the construction and operation of the Project B Offshore works.

Part 2B (Licence Conditions)

Paragraphs 3 and 4 (Detailed offshore design parameters) set out the detailed offshore design parameters of the Project B Offshore works and repeats the detailed design parameters from requirements 3 to 6 of Part 3 of Schedule 1 to the Order. It was normal for FEPA licences to include a condition specifying the design limitations which were repeated from the associated Electricity Act 1989 consent.

Paragraph 5 (Layout rules) provides for the general arrangements for the layout of the turbines comprised within Work No. 1B to be in accordance with the parameters provided in requirement 3 and section 5.2 of Chapter 5 of the Environmental Statement. The condition also requires the layout to be agreed with the MMO.

Paragraph 6 (Notifications and inspections) provides for a system of providing copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO, and publicising commencement and progress of the licensed activities.

Paragraph 7 (Chemicals, drilling and debris) restricts the use of chemicals and other substances, the disposal of certain drilling arisings, and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.

Paragraph 8 (Force majeure) provides for the notification of deposits made in an emergency. This only refers to authorised deposits outside the Order limits because deposits within the Order limits would already be authorised.

Paragraphs 9 and 10 (Pre-construction plans and documentation) provides for the submission for approval by the MMO, before the commencement of licensed activities, of: the location and dimensions of wind turbine generators and offshore platforms, a construction and monitoring programme, a construction method statement, a project environmental management and monitoring plan, a marine mammal mitigation protocol (where appropriate), a cable specification and installation plan, and a scheme of archaeological investigation. Each plan must be submitted to the MMO at least four months prior to construction.

Paragraph 11 (Reporting of engaged agents, contractors and vessels) requires the Undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities, and a weekly update as to which vessels are being used during construction.

Paragraph 12 (Equipment and operation of vessels engaged in licensed activities) specifies various equipment and other conditions which vessels used for the licensed activities must be fitted with and comply with.

Paragraph 13 (Pre-construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for preconstruction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

Paragraph 14 (Construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results and allows the MMO to prevent the use of pile installation in certain circumstances.

Paragraphs 15 and 16 (Post construction surveys) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for post construction surveys/monitoring, and provides an indicative list of the expected post-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval. In addition condition 16 requires a maintenance plan to be submitted in relation to the operational phase of the development, in response to a request by the MMO.

Deemed Marine Licence 3

Part 3A – (Licensed Marine Activities)

Paragraph 1 (Interpretation) provides an interpretation of certain words and phrases used in respect of the licence for the Project A Offshore works and the contact details of the primary point of contact with relevant organisations including the MMO.

Paragraph 2 (Details of licensed marine activities) describes the project and specifies the licensable marine activities which are authorised by the licence in connection with the construction and operation of the Project A Offshore works.

Part 3B (Licence Conditions)

Paragraph 3 (Notifications and inspections) provides for a system of providing copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO, and publicising commencement and progress of the licensed activities.

Paragraph 4 (Chemicals, drilling and debris) restricts the use of chemicals and other substances, the disposal of certain drilling arisings, and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.

Paragraph 5 (Force majeure) provides for the notification of deposits made in an emergency. This only refers to authorised deposits outside the Order limits because deposits within the Order limits would already be authorised.

Paragraphs 6 and 7 (Pre-construction plans and documentation) provides for the submission for approval by the MMO, before the commencement of licensed activities, of: the location of the cable route, a construction and monitoring programme, a construction method statement, a project environmental management and monitoring plan, a marine mammal mitigation protocol (where appropriate), a cable specification and installation plan, and a scheme of archaeological investigation. Each plan must be submitted to the MMO at least four months prior to construction.

Paragraph 8 (Reporting of engaged agents, contractors and vessels) requires the Undertaker to provide to the MMO details of agents and contractors engaged to carry out

the licensed activities, and a weekly update as to which vessels are being used during construction.

Paragraph 9 (Equipment and operation of vessels engaged in licensed activities) specifies various equipment and other conditions which vessels used for the licensed activities must be fitted with and comply with.

Paragraph 10 (Pre-construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for preconstruction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

Paragraph 11 (Construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results and allows the MMO to prevent the use of pile installation in certain circumstances.

Paragraphs 12 and 13 (Post construction surveys) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for post construction surveys/monitoring, and provides an indicative list of the expected post-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

Deemed Marine Licence 4

Part 4A – (Licensed Marine Activities)

Paragraph 1 (Interpretation) provides an interpretation of certain words and phrases used in respect of the licence for the Project B Offshore works and the contact details of the primary point of contact with relevant organisations including the MMO.

Paragraph 2 (Details of licensed marine activities) describes the project and specifies the licensable marine activities which are authorised by the licence in connection with the construction and operation of the Project B Offshore works.

Part 4B (Licence Conditions)

Paragraph 3 (Notifications and inspections) provides for a system of providing copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO, and publicising commencement and progress of the licensed activities.

Paragraph 4 (Chemicals, drilling and debris) restricts the use of chemicals and other substances, the disposal of certain drilling arisings, and the monitoring of construction

materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.

Paragraph 5 (Force majeure) provides for the notification of deposits made in an emergency. This only refers to authorised deposits outside the Order limits because deposits within the Order limits would already be authorised.

Paragraphs 6 and 7 (Pre-construction plans and documentation) provides for the submission for approval by the MMO, before the commencement of licensed activities, of: the location of the cable route, a construction and monitoring programme, a construction method statement, a project environmental management and monitoring plan, a marine mammal mitigation protocol (where appropriate), a cable specification and installation plan, and a scheme of archaeological investigation. Each plan must be submitted to the MMO at least four months prior to construction.

Paragraph 8 (Reporting of engaged agents, contractors and vessels) requires the Undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities, and a weekly update as to which vessels are being used during construction.

Paragraph 9 (Equipment and operation of vessels engaged in licensed activities) specifies various equipment and other conditions which vessels used for the licensed activities must be fitted with and comply with.

Paragraph 10 (Pre-construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for preconstruction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

Paragraph 11 (Construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results and allows the MMO to prevent the use of pile installation in certain circumstances.

Paragraphs 12 and 13 (Post construction surveys) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for post construction surveys/monitoring, and provides an indicative list of the expected post-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

DEPARTMENT OF ENERGY AND CLIMATE CHANGE
2014

Planning Act 2008

Infrastructure Planning (Applications:
Prescribed Forms and Procedure)
Regulations 2009

Regulation 5(2)(c)

**The Dogger Bank (Teesside A and
B) Offshore Wind Farm Order**

Explanatory Memorandum

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Department of Energy and Climate Change 2014

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Explanatory Memorandum

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1. Introduction

- 1.1 This Memorandum accompanies an application for development consent by Forewind Limited ("the Company") and explains the purpose and effect of each article and Schedule in the draft Dogger Bank Teesside A&B Offshore Wind Farm Order ("the Order") (**Application reference 3.1**), as required by Rule 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹. Throughout the application documents the development consent order is also abbreviated to 'DCO'.
- 1.2 The draft Order forms part of the application made by the Company to the Secretary of State and would confer powers to construct two offshore wind turbine electricity generating stations ("the Generating Stations") proposed to be constructed within the Dogger Bank Zone (described in section 3 below) on the bed of the North Sea between approximately 125km and 290km off the UK coast of Teesside. In addition the draft Order would confer powers for associated development comprising offshore and onshore export cables, onshore grid connections, electrical substations and associated apparatus.
- 1.3 Under the terms of the draft Order powers will be conferred upon two companies established for the purpose of taking forward the construction and operation of the Generating Stations together with the associated development. The two companies (Bizco 2 and Bizco 3) are identified in the draft Order and for the purposes of this Explanatory Memorandum are referred to together as "the Undertaker". These companies are described in more detail in paragraph 2.4 below.
- 1.4 The draft Order also seeks to confer upon the Undertaker powers of compulsory acquisition of land or rights over land which are required for the onshore elements of the project or to facilitate them, or that are incidental to them within the meaning of section 122 of the Planning Act 2008² ("the 2008 Act").
- 1.5 In accordance with sections 117(4) and 120(5) of the 2008 Act, the draft Order is provided in the form of a Statutory Instrument because it seeks to apply, modify or exclude certain statutory provisions.
- 1.6 The draft Order is based on the Infrastructure Planning (Model Provisions)(England and Wales) Order 2009 (S.I. 2009 No. 2265) ("the 2009 Order") as well as relevant precedents. The 2009 Order contains model provisions which were formally prescribed for inclusion in a development consent order under section 38 of the 2008 Act. The former Infrastructure Planning Commission (IPC) was required to have regard to these provisions when exercising its power to make an Order granting development consent. However,

¹ S.I. 2009/2264

² 2008 c.29

the Localism Act 2011 repealed section 38 and removed the need for the decision maker to have regard to the prescribed model provisions in deciding an application. Planning Inspectorate advice note thirteen 'Preparing the draft Order and explanatory memorandum, April 2012' explains that the model provisions were intended as a guide for developers in drafting Orders, rather than a rigid structure, but aided consistency and assisted developers to draft a comprehensive set of lawful provisions.

- 1.7 Advice note thirteen suggests that provisions used in 'predecessor' regimes such as for Transport and Works Act Orders or Harbour Empowerment Orders may also be helpful in the drafting. This explanatory memorandum includes an explanation in relation to each provision as to whether the particular provision is based on the model provisions or a relevant precedent.
- 1.8 The guidance from Communities and Local Government on the pre-application process, 'Planning Act 2008 - Guidance on the pre-application process, January 2013' includes additional advice on the production of development consent orders. This suggests that, in drawing up the Order, applicants draw upon previous and current applications as a point of reference, which this Order has considered.
- 1.9 In addition, the Order is in the form of a statutory instrument, in line with paragraphs 84 and 85 of the guidance, and it contains the detail and provisions listed in paragraph 80. The Order takes a Rochdale envelope approach, with much of the finalised detail to be approved post-consent. Where this is the case, the authority with responsibility for discharging the requirement is identified, in line with paragraph 82 of the guidance. In most cases this is Redcar & Cleveland Borough Council for onshore works or the Marine Management Organisation (MMO) for offshore works. Statutory consultation and informal discussions have been carried out with these organisations on the content of the Order, and the wording of the requirements and conditions has been amended to reflect their comments where appropriate.

2. Background

The Company

- 2.1 The Company is a joint venture comprising four leading international energy companies which joined together to bid for the Dogger Bank Zone Development Agreement as part of The Crown Estate's third licence round for UK offshore wind farms (Round 3). Forewind combines extensive experience of international offshore project delivery and renewables development, construction, asset management and operations, with UK utility expertise spanning the complete electricity value chain. The joint venture draws on exceptional financial strength

and technical knowledge, which combined prepare it for the challenges facing Round 3 developers.

- 2.2 Each of the four owners, all leading players in their own right, recognise that by joining forces they have a unique ability to both make a significant contribution to the future of wind energy in the UK and demonstrate commitment to the continuing development of offshore wind. Forewind is committed to securing all the necessary consents required for the construction and development of the wind farms within the Dogger Bank Zone (described in section 3 below).
- 2.3 The four owners of the Company are:
- 2.3.1 RWE Innogy UK is the UK subsidiary of RWE Innogy and one of the UK's leading renewable energy developers and operators. The organisation is committed to developing and operating renewable energy projects to produce sustainable electricity.
 - 2.3.2 SSE Renewables Developments (UK) Limited is part of the SSE group. SSE has over 3,000MW of renewables generation in its portfolio making it the largest generator of electricity from renewable sources across the UK and Ireland.
 - 2.3.3 Statkraft UK Limited manages Statkraft's interests in the UK. Statkraft is Europe's largest generator of renewable energy and is the leading power company in Norway. Statkraft owns, produces and develops hydropower, wind power, gas power and district heating. Statkraft is also a major player in European power trading.
 - 2.3.4 Statoil Wind Limited is part of Statoil, an international energy company headquartered in Norway that has operations in 36 countries. Statoil is committed to accommodating the world's energy needs responsibly. In undertaking this challenge Statoil draws upon 40 years of experience from oil and gas production in harsh environments such as the North Sea.
- 2.4 To lead the investment and construction in the numerous Dogger Bank wind farm projects, a number of special purpose companies have been set up. Dogger Bank Project 2 Bizco Limited ("Project 2 Bizco" or "Bizco 2") is the undertaker for and will take forward the Dogger Bank Teesside A project from the point of consent, and Dogger Bank Project 3 Bizco Limited ("Project 3 Bizco" or "Bizco 3") is the undertaker for and will take forward the Dogger Bank Teesside B project from the point of consent. Project 2 Bizco and Project 3 Bizco are together hereafter referred to as "Bizcos". The ownership and control of the Bizcos is currently the same as for Forewind.

- 2.5 It is the intention that each of the Projects authorised by the Order can or will be undertaken separately from the other.
- 2.6 The current ownership arrangements are likely to evolve, with one of the parent companies taking a leading role in each of the respective Bizcos. The infrastructure assets that will form each wind farm may or may not be owned by the respective Bizcos. There are a range of complex issues to inform a final decision including contemplation of unincorporated versus incorporated joint venture structures. Whatever asset ownership model is selected for each project, ownership and control of each Bizco will always match the ownership and control of assets.
- 2.7 As mentioned in paragraph 1.3 above, consent is being sought to confer powers on two of these companies which are identified in the Order in respect of the Generating Stations together with the associated transmission assets. Under article 7 the provisions of the Order shall have effect solely for the benefit of the Undertaker defined in the Order. Notwithstanding this, under article 8 the Undertaker has the power to transfer some or all of the benefit of the Order. The power to transfer extends to any provision of the proposed deemed Marine Licences, more information on which is provided in section 13 below and in particular the comments provided in relation to article 38 of, and Schedule 7, to the Order.

3. The Dogger Bank Zone

- 3.1 The Dogger Bank Zone is located in the North Sea between approximately 165km and 196km off the Teesside coast and extends over an area of approximately 8,660km²; it is the largest of the nine Round 3 offshore wind farm zones.
- 3.2 Forewind aims to secure development consent for six projects within the Dogger Bank Zone (Dogger Bank Croyke Beck comprising two wind farms; Dogger Bank Teesside A&B comprising two wind farms; and Dogger Bank Teesside C&D also comprising two wind farms) which have a total target installed capacity of 7.2 GW. Forewind's focus is to secure the first four wind farms, each up to 1.2GW, or up to a total installed capacity of 7.2GW.
- 3.3 To ensure that the work associated with the delivering of Dogger Bank Zone is managed effectively, and to more evenly distribute demands on stakeholders and the supply chain, Forewind is developing the Dogger Bank Zone sequentially in stages, which are known as tranches. A zone appraisal and planning (ZAP) process was adopted by Forewind using both the available information and the outcome of stakeholder consultations to identify the optimum location for these proposed tranches.

- 3.4 Following completion of the first phase of its ZAP process in 2010, Forewind identified the boundary of Tranche A. Tranche A is an area of 2,000 km² which lies to the south west of the Dogger Bank Zone. Subsequently Tranche B was identified in October 2011 and the Tranche C and D selection report was published in August 2013.
- 3.5 Within each tranche, Forewind intends to identify at least two wind farms, each with a capacity of up to 1.2GW, making each of these offshore wind farms a Nationally Significant Infrastructure Project ("NSIP") in its own rights for the purposes of the 2008 Act.
- 3.6 In order to maintain flexibility in the location of these wind farms through the tranche development process, the area of each tranche was larger than the footprint required for the individual projects located within it. As a result, the location of those wind farms can remain flexible throughout the data collection and stakeholder consultation phase, and then the identification of project boundaries within each tranche could then be influenced by and take into account stakeholder discussions and due consideration of environmental and engineering factors.
- 3.7 The two wind farms which comprise this application for development consent, are Dogger Bank Teesside A, wholly located with Tranche Band Dogger Bank Teesside B, partly located in Tranche A and partly located in Tranche B. Jointly these two wind farms are known as Dogger Bank Teesside A&B ("the project").

4. Earlier Development of the Zone: Dogger Bank Creyke Beck

- 4.1 Following the ZAP, Forewind's development of the Dogger Bank Zone began with Dogger Bank Creyke Beck for which a development consent application was submitted with the Planning Inspectorate on 29 August 2013. This application was accepted by the Planning Inspectorate on 25 September 2013. Dogger Bank Creyke Beck comprised two wind farms, each with a generating capacity of up to 1.2 gigawatts (GW), connecting to the existing National Grid substation at Creyke Beck, in the East Riding of Yorkshire. Dogger Bank Creyke Beck will have a total combined generating capacity of up to 2.4GW.

5. Dogger Bank Teesside A&B

- 5.1 The Order seeks authority for the construction and operation of two Generating Stations (under section 37 of the 2008 Act) (Dogger Bank Teesside A and Dogger Bank Teesside B), which are the primary development for which a development consent order is sought in the Application. The Generating Stations will each have a nominal electrical output capacity of up to 1.2 GW (up to 2.4GW in total) and will generate electricity from the energy that is available from the wind.

- 5.2 The Generating Stations comprise the offshore wind turbine generators together with offshore collector and converter platforms, accommodation or helicopter platforms, meteorological stations and inter-array cabling. Offshore associated development includes high voltage direct current (HVDC) export cables, and onshore associated development includes HVDC cables, converter station(s), high voltage alternating current (HVAC) cables and grid connection works.
- 5.3 The onshore point of connection to the UK electricity transmission network for the proposed offshore wind farms is determined by National Grid through a Grid Connection Application Process. Through this process, Forewind has secured capacity for the Generating Stations at the existing National Grid Lackenby substation near Wilton Works, Teesside in the borough of Redcar & Cleveland; more details on this are provided in the National Grid Statement Regarding Onshore Interface Points, which is Appendix A to Chapter 6 of the Environmental Statement (**Application reference 6.6.1**).
- 5.4 The landfall is located between Redcar and Marske-by-the-Sea on the Teesside coastline, in the borough of Redcar & Cleveland.
- 5.5 The location of the project is shown in Figures 1.2 and 1.3 in the Non-Technical Summary ("NTS") of the Environmental Statement (**Application reference 6.36**) and the site is more fully described in sections 1.5 to 1.8 of the NTS.
- 5.6 Sections 8 and 9 of this document describe the Generating Stations and associated development in more detail. A full technical explanation of the project is contained in Chapter 5 of the Environmental Statement accompanying the application (**Application references 6.5**). A detailed Planning and Design Statement also accompanies the application (**Application reference 8.1**) which sets out the planning policy framework against which this application will be determined, along with the design rationale for both the offshore and onshore elements of the project.

6. The Offshore Transmission Regulatory Framework

- 6.1 In March 2007³, Government adopted a framework for the delivery and maintenance of offshore transmission assets; a competitive, asset based regulatory regime. This has been further developed by Government and the Office of Gas and Electricity Markets (Ofgem) to become an approach whereby multiple parties compete through a tender process to secure licences to build (where appropriate), own and operate offshore transmission assets. This provides the overarching legal and regulatory framework within which investment decisions are taken, and within which policy and regulatory developments occur.
- 6.2 Under these arrangements, Ofgem is responsible for running a competitive tender process to select an offshore transmission owner (OFTO) to own and manage offshore transmission assets. Generators of electricity have the option to construct the assets themselves before transferring them to an OFTO upon completion, or to request an OFTO to do so. Participants in the tender process bid against each other in terms of the revenue stream they would require to buy or construct the assets, and to operate and manage them.
- 6.3 The key reasons for the decision behind the competitive framework, as set out in the March 2007 document and reiterated since in joint Department of Energy and Climate Change (DECC) and Ofgem publications, were that such a regulatory regime would deliver:
- 6.3.1 cheaper and more timely offshore grid connections;
 - 6.3.2 encourage innovation through competition and enable new entrants to compete in the market;
 - 6.3.3 be more focussed on generators' requirements; and
 - 6.3.4 enable generators to construct their own transmission assets if they wish, thereby creating more certainty for generators.
- 6.4 The UK Government has placed considerable weight upon the ability of offshore wind to deliver the UK's 2020 target of 15% of total energy from renewable sources. In doing so, the Government has recognised in the "UK Renewable Energy Roadmap" (July 2011) that driving down the cost of delivery of offshore wind projects is critical to the success of the sector. One of the commitments in the Roadmap is to establish *"an industry Task Force to set out a path and action plan to reduce the costs of offshore wind to £100/MWh by 2020 and provide up to £30m of direct Government support for offshore wind cost reduction over the*

³ <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file38705.pdf>

next 4 years” (Executive Summary). The DECC announcement of that date quoted the Minister as referring to *“this vital work to drive down the costs of delivering our offshore wind ambitions”*.

6.5 Therefore, the possible future transfer scenarios that may be implemented if the Order is consented are:

- 6.5.1 identification of transferees in the Order;
- 6.5.2 a split between Bizcos within the same consent, with changes to the ‘undertaker’ being made;
- 6.5.3 transfer of OFTO assets for each wind farm upon appointment of OFTO; by law Forewind is required to sell the OFTO assets;
- 6.5.4 potential appointment of a new authority to oversee or operate offshore transmission assets as part of a co-ordinated network. The potential role of such a body is being discussed at a policy level and establishing such an authority creates the possibility of the establishment of a licensed Zone Transmission Operator (TO);
- 6.5.5 two Generating Stations will each have two 500 megawatt (MW) connection agreements and will require up to four collector platforms for a permissive transfer scheme to reflect spatial division of generating assets. It is foreseeable, particularly in the operations phase, that owners would rather own a higher percentage or even 100% of a smaller wind farm rather than have a small share of a 1-1.2GW wind farm. In this scenario the consent for a wind farm could be split into two or more components.

7. Need for Flexibility in Consents for Offshore Wind Farm Development

7.1 At the time of the submission of the draft Order a number of details of the proposed development will remain uncertain. These uncertainties can realistically only be resolved between the date of the confirmed Order and the commencement of construction. Examples of uncertainties include the precise number of wind turbines, rotor diameters and blade tip heights of the turbines, separation distances between turbines, and turbine foundation types.

7.2 It is not possible to achieve certainty on the matters described above, and possibly other features of the development, because of a number of unknown factors. In particular, the dimensions and the installed capacity of the turbines cannot be established until the turbines have been procured; the detailed geotechnical information to inform the design can only reasonably be obtained following confirmation of the Order; and, wind turbine technology continues to evolve and change over what is a lengthy development and consenting phase.

- 7.3 There is therefore a need for flexibility within the Order in defining a number of aspects of the application. It is important to retain this flexibility, noting also the level of investment required to deliver the project and an understandable wish to avoid having to seek a further Order or amendments to the confirmed Order. This of course needs to be balanced against the need for a robust environmental impact assessment of the effects of the proposed wind farms. It is essential for legal reasons to match the scope of the Order to that of the environmental impact assessment. Well established case law confirms that if an Order is wider in scope than the environmental impact assessment then the Order would not be lawful.
- 7.4 The Overarching National Policy Statement (NPS) for Energy (EN-1) and the NPS for Renewable Energy Infrastructure (EN-3) provide the primary basis for decisions on applications for development consent for nationally significant renewable energy infrastructure. These documents recognise this need for flexibility, and in such cases, identify appropriate ways of addressing this need.
- 7.5 In particular, paragraph 2.6.42 of EN-3 recognises that the precise content of a proposed offshore wind farm may be unknown to the applicant at the time of the application for development consent, including the location and configuration of turbines and associated development, cable route and exact locations of offshore platforms. For this reason, EN-3 acknowledges that some flexibility may be required in the consent.
- 7.6 In such cases, EN-3 advises that applicants should take a realistic worst case (maximum likely adverse impact) approach to environmental impact assessment, and that the uncertainties already discussed should be allowed for in the consideration of the application and within any subsequently confirmed Order.
- 7.7 Government guidance on the pre-application process under the 2008 Act, "Planning Act 2008 - Guidance on the pre-application process, January 2013", also recognises that where developments will take a considerable amount of time to complete, applicants are likely to need flexibility in the Order to take advantage of future technological developments. However this in turn poses specific challenges as the draft Order needs to be detailed enough to allow the Secretary of State to make an informed and balanced decision on the impacts of the development versus the benefits. The guidance advises that applicants should identify aspects of the project where flexibility is required, and that they may wish to include provisions in the Order requiring the further approval of those parts of the project where flexibility has been retained.
- 7.8 The guidance states that the flexibility afforded to the applicant should be within clearly defined and reasonable parameters, and that such parameters should be no greater than the minimum range required to deliver the project effectively. It

is for the applicant to justify these parameters when they submit their application. For this project a justification is provided within the Environmental Statement, within supporting application documentation and partly within section 7 of this document.

- 7.9 In April 2012 the Planning Inspectorate issued advice note nine on the use of the principle known as the 'Rochdale envelope' approach. It advises that the use of a Rochdale envelope should not be used as an excuse to provide insufficient details and that developers of offshore wind farms should make every effort to finalise as much of the project as possible prior to submission of their development consent order application. Advice note nine also suggests that a practical way forward would be for the development consent order application to set out specified maxima and minima for relevant project parameters. In the case of offshore wind farms some examples are given of parameters for which flexibility is required. Some of these are discussed in paragraph 6.1 above.
- 7.10 The advice note advises that developers should be in a position to be able to identify the most likely variations of options and so provide a more focused description. However, it advises that the proposed flexibility should not permit such a wide range of materially different options that each option in itself might constitute a different project for which development consent should be sought and an Environmental Statement provided, nor allow a scheme to be implemented which is materially different from that assessed in the Environmental Statement. These principles are endorsed in relevant case law. The advice note states that if approved, any flexibility in the project will need to be reflected in appropriate development consent order provisions and any conditions attached to the deemed Marine Licences issued with the Order.
- 7.11 In the light of this policy, guidance and advice, Forewind has given careful consideration as to how the proposed development can be articulated within the Order, so as to provide the required degree of flexibility, whilst at the same time specifying worst case parameters which are sufficient to define the project. This is explained in more detail in section 8 below.

8. Application of Design Parameters from Advice Note Nine

- 8.1 As previously explained, a Rochdale envelope approach has been taken to the development description in accordance with the Overarching National Policy Statement (NPS) for Energy (EN-1) and the NPS for Renewable Energy Infrastructure (EN-3). The scope of the envelope has been defined in accordance with Planning Inspectorate's advice note nine (April 2012).
- 8.2 The project description in the draft Order is based upon Chapter 5 in the Environmental Statement, which provides the maximum extent of the proposed authorised development and the flexibility sought. This describes the realistic

worst case parameters on which the assessment within the Environmental Statement is based and has been the subject of consultation with key stakeholders and the public. The envelope seeks to maintain the flexibility needed whilst providing sufficient detail so that the project is clearly defined and a robust environmental impact assessment has been undertaken.

- 8.3 Advice note nine proposes that an Order seeking development consent under the 2009 Act sets out specified maximum and minimum parameters for certain elements, whilst recognising that other criteria may also be relevant. Those listed are: number of turbines; nacelle (hub) height; blade tip height; minimum clearance above mean sea level; and minimum separation distances between turbines.
- 8.4 Each of these is described in more detail below, in addition to an account of other parameters also used to define the project.

Total MW capacity

- 8.5 This is not included in the list of parameters in the advice note but, along with the project boundary, is one of the most important defining characteristics of an offshore wind project. The 2008 Act uses the total expected MW installed capacity as the key determinant of the size of a project and for Dogger Bank Teesside A&B the installed capacity is up to 2.4GW (2,400MW), which exceeds the threshold for a nationally significant infrastructure project. The grid entry capacity is based on the connection agreement into National Grid's existing onshore substation at Lackenby. 2GW (2,000MW) of grid connection capacity has been secured, based on 1,000MW for Dogger Bank Teesside A (also referred to as Project A) and 1,000MW for Dogger Bank Teesside B (also referred to as Project B). Notwithstanding this grid connection capacity, the Order provides for a maximum installed generating capacity of 2,400MW (2.4 GW) which allows the projects to be optimised for maximum efficiency taking into account electrical losses, availability, and the natural variability of a wind farm's output. This is described as 'overplanting' (adding additional turbines to offset losses and increase the utilisation of the transmission capacity) and this potentially allows for an improved economic optimisation of the project. Further details on the project's capacities and overplanting are provided in Chapter 5 of the Environmental Statement.

Total number of turbines

- 8.6 This is informed by the total maximum capacity and the range of turbine sizes used within the Environmental Statement. The impacts arising from a range of turbine sizes are presented in Chapter 5 of the Environmental Statement, based on the parameters likely for turbines up to 6MW and greater than 10MW; these form the basis of the environmental assessment.

- 8.7 To reduce significant effects on ornithology, a key embedded mitigation is the restriction of the maximum number of wind turbine generators within the Order. The maximum total number of wind turbine generators permitted for the project is 400 (up to 200 turbines each for Dogger Bank Teesside A and B).
- 8.8 In addition, in order to provide further mitigation against bird collisions, further embedded mitigation has been implemented by restricting the minimum lower blade tip height above highest astronomical tide (HAT) to 26 metres.
- 8.9 Although advice note 9 suggests a minimum number of turbines should be specified, this is not considered appropriate for the project. For commercial purposes a developer will seek to optimise the output from the site, within the parameters assessed within the Environmental Statement. It should be assumed that most value will be achieved from the project, which is a commercial issue rather than one to be captured within the consent.

Turbine dimensions

- 8.10 The turbine manufacturer or turbine model has not yet been determined. Due to technological advances which could take place between the development consent being granted and the commencement of construction, setting out rigid parameters for turbine sizing could rule out potentially suitable machines. The parameters used within the project description to fix the turbine dimensions envelope, which are secured by the Order, are as follows: maximum upper blade tip, minimum lower blade tip, maximum rotor diameter and maximum project rotor swept area. The tip height will not exceed 315 metres above the level of the sea at the highest astronomical tide (HAT) and, as explained above, there will be a minimum blade clearance of 26 metres between the lowest point of the rotating blade of the wind turbine and the level of the sea at HAT (as a result of mitigation for ornithology). Although a reference point of Mean High Water Springs (MHWS) is used in the Guidance on UK Navigational Practice, Safety and Emergency Response Issues (MGN371), HAT is used in the Order instead as it is a more conservative measure and is easier to determine. The Order contains details of the maximum total rotor swept area for each project in 4.35 km² which simplifies the envelope and is a more robust approach as it defines a continuum between the dimensions for the individual turbines described. This approach, combined with the project total MW capacity, links the number of turbines and the rotor diameter in a clear way, and allows a regulator to calculate the maximum size of wind turbine which will lie within the assessed envelope at any capacity. For instance, the project capacity in GWs allows the maximum number of wind turbines to be calculated for any turbine capacity. The number of turbines along with the maximum project swept area then restricts the maximum rotor diameter for each turbine. Furthermore, the thresholds on key figures (such as number of turbines and a maximum rotor diameter of 215 metres) clearly define the limits of the envelope. Figures 3.1, 3.2 and 3.3 in

Chapter 5 of the Environmental Statement show indicative dimensions for the various turbine sizes. The height of the nacelle (hub) height is not included within the description because the limits of this value are already restricted to a range by the specified rotor diameter and rotor tip heights, therefore the other dimensions referenced above are considered to define the turbine size sufficiently.

Separation distances between turbines

- 8.11 The final layout of the turbines will be determined post-consent in conjunction with the MMO. However, in order to address concerns expressed by other marine users, some restrictions on the turbine spacing is included within the draft Order. This confirms the minimum spacing is a circular area around each turbine of a distance of six times the rotor diameter. A minimum distance of 750 metres is also included to ensure that, regardless of the rotor diameter (in the case of smaller turbines), the spacings meet the distances requested by other marine users. Requirement 7 (Layout Rules) within the draft Order ensures that the final layout of the array areas, including turbine positions and spacings, is designed in accordance with the principles set out in Chapter 5 of the Environmental Statement; these principles capture layouts agreed with stakeholders including the Marine and Coastguard Agency.

Foundation parameters

- 8.12 The Order provides for four different main foundation types for wind turbine generators and meteorological stations: gravity base, monopole, multileg and floating structure secured by chain and anchor, and two main types for offshore platforms: multileg or gravity base. The requirement to consent a wide range of foundation options is driven by a number of factors including: the variability in water depth and ground conditions across the project areas, the uncertainty in the size of the wind turbines and offshore platforms, the range of detailed design approaches which may be selected by suppliers, and the costs of the materials of the foundation types at the time of project design and build. Detailed foundation geometry is inherently variable and it is not considered realistic to identify a single set of limiting structural dimension parameters to represent the full consent envelope. Therefore, in order to define a realistic limiting description of the foundation geometry for the Rochdale envelope, key aspects of the foundations have been identified as follows. These are the parameters used within the environmental assessment and are captured within the draft Order.
- 8.13 The obstruction of the wind turbine foundations to the passage of waves and tidal currents is the key input to assessment of impacts upon marine physical processes (rather than detailed foundation geometry). Following consultation with experts in the field of fluid flow modelling, the “wave reflection coefficient” was identified as a value which appropriately describes this property of a

foundation structure. A recognised methodology for consistently calculating this value was developed and this is detailed within Appendix 5.B of the Environmental Statement. Appropriate worst-case wave reflection coefficients have therefore been developed and the range of values assessed within the environmental impact assessment is shown in Table 3.6 in Chapter 5 of the Environmental Statement. The Order therefore restricts the development to wind turbine foundations which lie within this range. The Order cross-refers to these values as set out within the relevant sections of the Environmental Statement.

- 8.14 Worst-case seabed footprint areas and maximum overall foundation widths have also been developed through concept design studies. These are commonly required in assessments on subjects such as impacts on the seabed and the potential for vessel collisions, and are also useful when visualising the foundations described. To capture these within the Order, Requirements 4 (for wind turbine generators) and 5 (for offshore platforms) include figures for the maximum width of supporting structure in metres and the maximum seabed footprint area per foundation (including scour protection) in metres squared.
- 8.15 This approach ensures foundation selections can be easily verified as falling within the project assessment envelope and this is robustly linked to the environmental impacts, giving certainty that the foundations within the consent envelope will always have environmental impacts within the assessed limits.

Offshore platforms

- 8.16 The total number of offshore platforms will not be known until the design stage, but Part 1 of Schedule 1 in the Order provides the following maximum numbers of each type of platform: up to eight collector platforms, two converter platforms and up to four accommodation or helicopter platforms. The locations of the platforms will depend on the final layout and post-consent design optimisation, however the Order restricts all platforms to the array areas (Work No.s 1A and 1B) and the final layout will be agreed in conjunction with the MMO. In addition, the precise dimensions of each of the platforms cannot be fixed at the current time so maximum dimensions are included in the Order including width, length and height. The Order also includes a provision to combine any of these platforms and meteorological stations, so it may be that a collector platform and accommodation platform are combined, or several collector platforms are combined for efficiencies. The worst case assessed in the Environmental Statement relates to the maximum number of platforms and their footprint. Because the dimensions of any of the combined structures must not exceed those of the individual platforms comprising the combined structure, any reduction in the number of platforms through combinations will not increase any of the identified realistic worst case environmental impacts within the Environmental Statement. The draft Order restricts the seabed footprint area of

subsea / scour protection associated with offshore platforms, and the maximum dimensions for the seabed footprint area per foundation are also specified.

Offshore cables

- 8.17 As the number, layout and total length of the cables will not be determined until the post-consent design optimisation, parameters are included to limit the extent of the cables within the Order limits. The width of the cable corridor captured within the Order limits is restricted to 2km as this was considered the minimum necessary to give sufficient space to install cabling for both Dogger Bank Teesside A and Teesside B with enough flexibility to avoid unknown constraints, such as debris.

Requirements within the Order restrict the maximum number of HVDC cables to two per project and set a maximum length for the HVDC export cables.

Onshore parameters

- 8.18 The requirements for the onshore cable width are explained in section 4.3 of Chapter 5 in the Environmental Statement, which justifies a working width of 36 metres for the HVDC route and 39 metres for the HVAC route and identified on the onshore works plan. This relates to the standard working width required for either a trench or a minor horizontal directional drill (HDD). This overall width of the corridor is split into two separate Work No.s 6A and 6B, with a working width of 18 metres for each of the Generating Stations' HVDC cable routes. In some areas, for example, where a longer and / or deeper underground section of cabling is necessary, a major HDD will be required. This includes drilling under the Network Rail line and trunk roads. For these sections the cable route for the drilled (below-ground) sections, between the two end compounds, will typically be 50 metres, which is reflected in the Order Limits.

9. Nationally Significant Infrastructure – The Generating Stations

- 9.1 Pursuant to sections 14(1)(a) and 15(3) of the 2008 Act, the construction or extension of an offshore electricity generating station which is in waters in or adjacent to England and whose capacity is expected to be more than 100 megawatts is an NSIP for the purposes of the 2008 Act.
- 9.2 Section 31 of the 2008 Act provides that development consent is required under the Act for development that is or forms part of a NSIP.
- 9.3 As the proposed Generating Stations as defined in the Order are offshore electricity generating stations each with a proposed nominal gross electrical output capacity of 1.2 GW, they each form an NSIP in their own right for the purposes of the 2008 Act and an application for development consent must

therefore be made to the Secretary of State under section 37 of the 2008 Act to authorise their construction.

- 9.4 The combined elements of the two Generating Stations (each constituting an NSIP) include:
- 9.4.1 up to 400 offshore wind turbine generators including foundations; the coordinates of the boundaries within which the Generating Stations will be located are specified in Schedule 1 to the Order and on the Order limits and grid co-ordinates plan submitted with the application;
 - 9.4.2 alternating current (AC) inter-array cabling between the offshore wind turbine generators, meteorological stations and offshore platforms and cabling between the offshore platforms;
 - 9.4.3 up to eight offshore collector platforms and up to two offshore AC to direct current (DC) converter platforms, including foundations; and
 - 9.4.4 crossing structures at the points where the export and inter-array cables cross existing subsea cables and pipelines.
- 9.5 Government Guidance⁴ states that a single application for development consent can cover more than one NSIP and encourages applicants as far as possible to make a single application where developments are clearly linked. It is considered that this is clearly the case in respect of these wind farms.
- 9.6 The Order authorises two separate NSIP wind farms: Dogger Bank Teesside A and Dogger Bank Teesside B along with the grid connection for each of these. These wind farms each have separate connection points into the same National Grid substation and follow a parallel alignment due to the synergies between the projects; therefore following discussion with key stakeholders and regulators it was determined at an early stage to combine these two wind farms into one application for development consent order. This was to avoid the need for two separate but virtually identical Environmental Statements and the duplication of statutory consultation, which could cause increased stakeholder workload, stakeholder fatigue and potential for confusion with the public. In addition, a combined application will avoid the potential for separate hearings on identical issues, also saving time and resources for all involved. Finally, this approach was considered appropriate to harmonise consent requirements, again saving time and resources of stakeholders when discharging these schemes and achieving some consistency of construction and operation across both projects.
- 9.7 The two NSIPs are likely to be constructed by different operators, Bizco 2 and Bizco 3, each named as an Undertaker within the Order definitions. Therefore,

⁴ DCLG Guidance, Planning Act 2008: Guidance on associate development applications for major infrastructure projects, April 2013.

for the sake of clarity and transparency for stakeholders, the areas over which each Undertaker will have control both offshore and onshore is shown on the Works Plans through the use of different Works No.s (for example 1A, 2A, 3A etc for Dogger Bank Teesside A (Bizco 2), and 1B, 2B, 3B etc for Dogger Bank Teesside B (Bizco 3)). There are also shared areas identified separately such as the offshore temporary work area for construction (Work No. 2T), joint accesses to the onshore cable route (Work No.s 10A to 10F), the onshore converter station(s) site (Work No. 7), screening landform to the west of the converter station ((Work No. 7L) and some connections works at the existing National Grid substation at Lackenby (Work No. 9). These Work No.s are explicitly referenced as "shared areas" within the Order because equal access to these sites is necessary for both projects. In relation to Work No. 9, the design and exact location for connection works has yet to be finalised with National Grid so an alternative location within Work No. 9 is retained as an option within the Order Limits in which either project may locate their connection works. To explicitly identify the split between the projects, the Works Plans therefore show a centre line down the cable corridor to delineate Work No.s split by A and B. This provides the landowners with certainty on which Undertaker will have the powers and liabilities over that section of their land and the regulators are clear from the consent documents where responsibility for compliance rests and therefore who is responsible for any breach (should one occur).

- 9.8 As the projects will be built by different operators, they may be constructed at different times. The assessment within the Environmental Statement allows for different construction scenarios, as described in Tables 6.1-6.5 of Chapter 5, including building both projects at the same time (concurrent build) or building them sequentially. The worst case scenario in environmental terms was predicted and assessed for each Chapter. To capture these different build scenarios in the Order, and to make sure there is flexibility to build one project independently of the other, each project is split into onshore 'stages' which are defined specifically within the Order. The interpretation in Part 3 Requirements separates the stages by project (Project A and Project B), and also by construction area with the landfall, onshore cable route and access tracks, converter station(s) and National Grid connection works all being identified as different stages.

10. Associated development

- 10.1 Section 115 of the 2008 Act provides that development consent may be granted for both the NSIP for which such consent must be obtained as well as development associated with the NSIP.

- 10.2 Guidance on associated development has been issued by the Secretary of State for Communities and Local Government⁵, which describes types of development that may qualify as associated development. This guidance requires that associated development "*should not be an aim in itself but should be subordinate to the principal development*" and it requires a direct relationship between associated development and the principal development. In particular, it states that associated development may include measures which help address the impacts of the development.
- 10.3 The Order seeks authorisation for the following development, which is referred to as associated development throughout the application documentation:
- 10.3.1 Direct Current (DC) subsea export cable system from the offshore converter platforms to the landfall site. The location of this route has been informed by various technical and environmental constraints as described further in the Planning and Design Statement (**Application reference 8.1**) and Chapter 6 of the Environmental Statement (**Application reference 6.6**);
 - 10.3.2 underground jointing chamber(s) for onshore cables located at the landfall site (known as the landfall transition joint bay(s)) where the subsea export cables come ashore and join to the onshore cables;
 - 10.3.3 underground onshore DC export cable system which runs for approximately 7km from the landfall transition joint bay(s) to the onshore DC to AC converter station(s);
 - 10.3.4 up to two onshore DC to AC converter station(s) which could be up to 20m in height for the valve hall (excluding lightning protection) and will require a combined permanent land take within Work No. 7 with additional land required for mitigation such as landscaping (Work No. 7L). The detailed elements of Work No. 7 are not fixed and will be the subject of details to be submitted to the Redcar & Cleveland Borough Council for approval post-consent, along with the approval of a landscaping scheme for Work No. 7L to mitigate the visual impacts;
 - 10.3.5 AC underground cables for approximately 2km from the onshore converter station(s) to National Grid's existing substation at Lackenby;
 - 10.3.6 offshore operations and maintenance infrastructure;
 - 10.3.7 onshore infrastructure including means of access, temporary construction compounds and landscaping; and

⁵ Guidance on associated development applications for major infrastructure projects, April 2013.

10.3.8 permanent moorings, navigational buoys and scour protection measures.

- 10.4 The Company recognises that some of the development proposed is likely to constitute associated development within the meaning of section 115(2) of the 2008 Act, rather than part of the NSIP itself. However, in some cases the distinction is less clear, with accommodation or helicopter platforms being an example of this. In any event, the Company is confident that all elements of the proposed development either constitute part of the NSIP or are “associated development” within the meaning of section 115(2).
- 10.5 Section 115(2) of the 2008 Act is clear that associated development does not include the construction or extension of one or more dwellings. A dwelling house has a well-established meaning in planning legislation and the term ‘dwelling’ ordinarily affords the facilities required for day to day private domestic existence (see *Moore v Secretary of State for the Environment*, 1998⁶). The accommodation or helicopter platforms that are proposed within the draft Order solely incorporate accommodation for staff during the construction, operation and decommissioning of the offshore works. As such, they fall within the scope of associated development under section 115 of the 2008 Act as the proposed workers’ accommodation is similar to a hostel with its single rooms supported by catering and other facilities elsewhere on site. Quite clearly these facilities do not provide the facilities required for day-to-day private domestic existence (see *R(Innovia Cellophane Ltd and another) v NNB Generation Company Ltd*, 2011⁷).
- 10.6 The Order also seeks consent for highway works at the following locations, which are set out in Schedules 2 and 4 of the draft Order. The Company considers all of these works would constitute associated development.

Streets subject to works (Article 12 and Schedule 2)

Area	Street subject to street works
Redcar and Cleveland	Coast Road (A1085)
Redcar and Cleveland	National Cycle Network Route 1
Redcar and Cleveland	Green Lane
Redcar and Cleveland	Public Byway (116/19/1)
Redcar and Cleveland	Redcar Road
Redcar and Cleveland	Cat Flatt Lane
Redcar and Cleveland	Public footpath (129/29/1)
Redcar and Cleveland	Public footpath (129/30/1)

⁶ 77 P&OR 114

⁷ EWHC 2883

Redcar and Cleveland	A174
Redcar and Cleveland	Grewgrass Lane
Redcar and Cleveland	Grewgrass Lane (Stewardship bridleway)
Redcar and Cleveland	Fishponds Road (B1269)
Redcar and Cleveland	Public footpath (106/190/1)
Redcar and Cleveland	Greystone Road (A1053)
Redcar and Cleveland	Public footpath (102/193/2)
Redcar and Cleveland	Public footpath (102/54/1)
Redcar and Cleveland	Public footpath (102/194/1)
Redcar and Cleveland	Coast Road (A1085)
Redcar and Cleveland	National Cycle Network Route 1
Redcar and Cleveland	Green Lane
Redcar and Cleveland	Public Byway (116/19/1)
Redcar and Cleveland	Redcar Road
Redcar and Cleveland	Cat Flatt Lane
Redcar and Cleveland	Public footpath (129/29/1)

Access to works to be constructed from the highway (Article 14 and Schedule 3)

Area	Streets to be temporarily stopped up
Redcar and Cleveland	Cat Flatt Lane
Redcar and Cleveland	Public footpath (129/29/1)
Redcar and Cleveland	Public footpath (129/30/1)

11. Ancillary Powers

- 11.1 The Order seeks a number of powers ancillary to the carrying out of above development, all of which fall within the scope of the Part I of Schedule 5 to the 2008 Act.
- 11.2 In particular, the Order seeks to confer powers upon the Undertaker to acquire land and rights compulsorily or by agreement in accordance with sections 120(4) and 122 of, and Schedule 5 to, the 2008 Act. A justification for these powers is set out in full in the Statement of Reasons **(Application reference 4.2)** accompanying the Application.

12. Consents prescribed under section 150 of the 2008 Act

- 12.1 Section 150 of the 2008 Act confines the power conferred by section 120(5)(a) which would otherwise enable provisions to be included in the Order the effect of which is to override the requirement for consent which may be required under another enactment. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010⁸ identifies a number of consents and authorisations which are prescribed for the purposes of section 150 of the 2008 Act in respect of England and Wales. The 'Consents and licences required under other legislation document' (**Application reference 5.4**) accompanying the application lists out the consents relevant to this application.

13. The Deemed Marine Licence

- 13.1 Included within the draft Order at Schedule 7 are four deemed Marine Licences, as provided for in section 149A of the 2008 Act which is an amendment brought forward by the Marine and Coastal Access Act 2009 ("the 2009 Act"). This states that the Order may include a provision deeming a Marine Licence, subject to conditions, to have been issued under Part 4 of the Marine and Coastal Access Act 2009 (marine licensing) for any activity.
- 13.2 The model provisions do not provide a draft deemed Marine Licence and simply refer to the Food and Environmental Protection Act 1985 and the Coast Protection Act 1949, and the licensing provisions under this legislation have been replaced by the marine licensing regime under the 2009 Act.
- 13.3 The draft licences have been prepared in a structure and style which reflects the main part of the Order, with conditions attached to each licence to distinguish them from the requirements in the main Order. The licence is deliberately drafted to be a stand-alone document to reflect the fact that it will have a wide distribution post-consent and this ensures any potential variations to the licences are easier to implement. Therefore the repetition of definitions, descriptions and conditions is inevitable and intentional.
- 13.4 Therefore, the licences require a suite of programmes, statements, plans, protocols and schemes which are approved by the MMO pursuant to the licence conditions, after relevant consultation, where most of the substance of the licence will be contained. Licensed activities cannot be commenced until such approvals are obtained and there is a standard requirement to comply with such approved documents unless agreed otherwise in writing.
- 13.5 Section 72 of the 2009 Act contains provisions relating to the transfer of Licences. Subsection (7) provides that a Licence may be transferred to another person and subsection (8) provides that a Licence may only be transferred in

⁸ S.I. 2010/105

accordance with subsection (7). It is understood that the view taken thus far by the MMO is that the power conferred by subsection (7) only authorises a Licence to be transferred in its entirety but not in part.

13.6 As mentioned in paragraph 1.2 above, the project consists of two NSIPs, each consisting of an offshore generating station. Accordingly, the Order makes arrangements for each NSIP to have attached to it a deemed Marine Licence in respect of the generating assets of the development and a separate deemed Marine Licence representing the transmission assets. This reflects the Company's understanding of the approach of the Government towards the Offshore Transmission Regulatory Frameworks as described in Section 5 above. Accordingly provision is made in the Order for the granting of four deemed Marine Licences as follows:

- Deemed Marine Licence 1 (Parts 1A and 1B of Schedule 7 to the Order) - Project A array area (generation);
- Deemed Marine Licence 2 (Parts 2A and 2B of Schedule 7 to the Order) - Project B array area (generation);
- Deemed Marine Licence 3 (Parts 3A and 3B of Schedule 7 to the Order) - Project A export cable (transmission assets);
- Deemed Marine Licence 4 (Parts 4A and 4B of Schedule 7 to the Order) - Project B export cable (transmission assets).

13.7 The deemed Marine Licence for the transmission assets (deemed Marine Licences 3 and 4) include the Work No.s for the export cable corridor (Work No.s 2A, 3A, 2B, and 3B) but also cover the Work No.s for the array area (1A and 1B). The reasoning for this is that the cut-off point between the ownership of the generation and transmission assets is the offshore collector platforms. These platforms will be located within the array area but their final location will not be known until the design stage, therefore the deemed Marine Licences for transmission also cover the whole of the array area. The spatial split between the Marine Licences is shown in the 'Indicative spatial extent of Marine Licences' plan and cross-section (**Application references 2.5.1 and 2.5.2**).

13.8 Work No. 2T covers an offshore temporary work area for construction activity around the offshore works. This work is included in each of the deemed Marine Licences and the carrying out of any licenced activities within the area of Work No. 2T by either Bizco 2 or Bizco 3 will be regulated by the terms of the relevant Licence.

14. Transferability of Consents

14.1 For a number of reasons an applicant for a development consent order may need to transfer some (or all) of the benefits and associated liabilities of an Order or Marine Licence to another entity (or entities) after the Order/Marine Licence has

been granted. Benefits and liabilities may need to be divided and/or transferred either:

14.1.1 spatially – a dividing line between the generation and transmission assets or alternatively a split between different parts of the offshore wind farm array; and

14.1.2 temporally – different generation/transmissions assets transferred to different entities at different times in a project lifecycle.

14.2 Since the enactment of the 2008 Act concerns have been expressed over whether development consents or parts thereof can be transferred from a Generator as part of a sale of an offshore generation project. These concerns were recently addressed by Government in a Report published by OFGEM and DECC in March 2012⁹.

14.3 Paragraph 61 of the Report advised that:-

"Whether the relevant transmission infrastructure has been consented through the Electricity Act 1989, the marine licensing regime, the town and country planning regime (for onshore elements) or the Planning Act 2008, the default position is that the benefit of the relevant consent runs with the land".

14.4 Paragraph 62 of the Report went on to say that:-

"The transfer of consents under the Planning Act 2008 is covered by DCLG's Model Planning Condition 5¹⁰, which provides for the benefit of a development consent order to be transferred with the consent of the Secretary of State. There should be no barrier to the transferability of development consents under that Act, provided that the DCO is drafted effectively, and the developer makes clear in submissions to the IPC/Secretary of State the range of possible future transfer scenarios so that these can be properly considered during the examination process and provided for in the final DCO".

14.5 The Company has noted the terms of the Report and in view of the interpretation placed upon Section 72 by the MMO the Company has made provision in article 7 (Benefit of Order) to put beyond doubt that the Undertaker will be able to transfer some or all of the benefit under the Order including terms of the deemed Marine Licences provided for in article 39 of the Order.

14.6 The Company notes that section 120(5) of the 2008 Act expressly states:

⁹ Offshore Transmission Co-ordination Project Conclusions Report.

¹⁰ This article is reproduced as article 8 of the Order.

"(5) *An Order granting development consent may –*

- (a) *apply, modify or exclude a statutory provision which relates to any matter for which provision is made in the Order;*
- (b) *make such amendments, repeals or revocations off statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of a provision of the Order or in connection with the Order;*
- (c) *include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the Order;*
- (d) *include incidental, consequential, supplementary, transitional or transitory provisions and savings."*

Section 120(6) of the 2008 Act provides that a statutory provision means "a provision of an act or of an instrument made under an Act".

The Company has sought to modify the provisions of the 2009 Act by making provision in article 8(6) of the Order. This allows an agreement to be made under article 8(1) to include relevant provisions (as defined in article 8(9)) as any of the provisions of the Marine Licences specified in Schedule 7 to the Order. Furthermore article 8(8) excludes the operation of Section 72(7) and (8) of the 2009 Act from any transfer of relevant provisions under an agreement made under article 8(1).

15. The Draft Development Consent Order

15.1 The purpose and effect of the articles to the Order are summarised below.

PART 1

Preliminary

Article 1 (*Citation and commencement*) does not appear in the model provisions. This provides for the citation and commencement of the Order.

Article 2 (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order.

PART 2

Principal Powers

Article 3 (*Development consent etc. granted by the Order*) provides development consent for the authorised development and consent for the ancillary works within the

Order limits, thereby authorising the construction of the authorised project. The “authorised development” is defined in article 2 (Interpretation) of the Order as the development which is described in Part 1 of Schedule 1 to the Order and any other development that is authorised under the Order. Such consent is subject to the requirements attached to the Order as set out in Part 3 of Schedule 1. These are provisions corresponding to planning conditions that would be imposed on the deemed planning permission for development authorised by a consent under section 36 of the 1989 Act. Article 3 adopts general model provision 2, but in addition a new paragraph (2) has been inserted which sets out the commencement timeframe for development. This states that the development for which development consent is granted must be commenced within seven years of the date on which the Order is made. Section 154 of the 2008 Act provides that the development for which development consent is granted must be begun before the end of the prescribed period or such other period (whether longer or shorter than that prescribed) as is specified in the Order granting the consent. Regulation 3(1) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 prescribes the period for the purposes of Section 154 of the 2008 Act as five years. However, the longer period of seven years provided for is required because of the scale and complexity of the project given the inclusion of two NSIPs within the one Order, and the lead in time required for contract award and turbine procurement.

Article 4 (*Maintenance of authorised project*) authorises the Undertaker to maintain the authorised development unless the Order or an agreement made under the Order provides otherwise. This provision follows general model provision 3. The definition of “maintenance” mirrors definitions used in other contexts and the confirmed Galloper Wind Farm Order. This definition remains the subject of debate with the MMO.

Article 5 (*Operation of generating station*) authorises the Undertaker to operate the generating station comprised in the authorised development pursuant to section 140 of the 2008 Act. Article 5(1) is not a model provision but is required in order to satisfy section 140 of the 2008 Act. In addition, article 5(2) has been inserted to take account of matters arising under section 150 of the 2008 Act. Under section 120(5)(a) of the 2008 Act a development consent order may “*apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order*”. Section 150 confines the power conferred by section 120(5)(a) which would otherwise enable provisions to be included in the Order the effect of which is to override the requirement for consent which may be required under another enactment. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010¹¹ identifies a number of consents and authorisations which are prescribed for the purposes of section 150 of the 2008 Act in respect of England and Wales. One of those consents is a licence under section 6 of the Electricity Act 1989.

Article 6 (*Procedure in relation to approvals etc under requirements*) deem the requirements which relates to works landward of mean low water springs, and hence

¹¹ S.I. 2010/105

within the area of the relevant planning authority, as planning conditions under section 72 of the Town and Country Planning Act 1990. The article also modifies the application of that Act to provide for the normal right of appeal in relation to the discharge of a planning condition. This article is not a model provision but is considered prudent to include it to avoid the need for the Secretary of State to have the role of determining detailed approvals post-consent under the relevant onshore requirements, which would otherwise be necessary under the 2008 Act.

Article 7 (*Benefit of order*) section 156 of the 2008 Act provides for a development consent order to have effect for the benefit of the land generally and anyone for the time being interested in the land, except to the extent that the Order provides otherwise (i.e. the same position that applies in respect of a planning permission). This contrasts with the usual position in relation to statutory powers, which is that the benefit of statutory powers extends only to the body on whom they are conferred. Article 7(1) provides for all the articles of the Order conferring power on the Undertaker to apply solely for the benefit of the Undertaker and mirrors general model provision 7.

Article 8 (*Consent to transfer benefit of Order*) makes provision to enable the Undertaker to transfer or grant any or all of the benefit of the provisions of the Order and related statutory rights to another person. The article is required to give effect to the proposals outlined in section 13 above. The related statutory rights referred to in article 8(6) extend to the rights and benefits conferred under the terms of the deemed Marine Licences granted by virtue of article 38 of the Order, but subject to article 8(3).

The Company notes the comments made by the Secretary of State in relation to paragraph 6.4 of the Secretary of State's decision letter for the proposed North Blyth Power Station Order. In particular, that the Secretary of State requires a role in consenting to the transfer of functions, apart from the transfer of compulsory purchase provisions, in order to obtain an oversight of the effectiveness of each of the requirements of the Order and the commitments to be given by an applicant in other respects. Accordingly article 8 has been drafted to retain that degree of oversight save where the transfer takes place in the terms specified in article 8(4).

Article 8(4) and (5) are not general model provisions but have been included in the Order as conditions in relation to the transfer of benefits under article 8(1) of the Order to another person.

Article 8(4) prescribes the characteristics of a transferee or lessee to whom benefits under the Order may be transferred without the consent of the Secretary of State under article 8(1). The transferee or lessee must either be a licence holder under the Electricity Act 1989 or the transfer must take place after the settlement of claims for compensation arising under the national compensation and in respect of the acquisition and use of land under the Order.

Article 8(5) further provides that certain powers of the Order may only be exercised by a person to whom powers to construct particular works are transferred pursuant to an agreement under article 8(1).

Article 9 (*Disapplication and modification of legislative provisions*) this article provides for the disapplication of certain requirements which would otherwise apply under public legislation. This is consistent with section 120(5)(a) of the 2008 Act, which provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.

Paragraph (1) provides for the disapplication of various additional consents which would otherwise be required from the Environment Agency under the Water Resources Act 1991, the Land Drainage Act 1991, and the Hedgerows Regulations 1997¹². These are the requirements for consents for abstraction and impoundment of water, and on placing structures on or over rivers, under the Water Resources Act 1991; the requirements for approval under flood defence and land drainage byelaws made or deemed to be made under the Water Resources Act 1991; the prohibition on placing obstructions in waterways which are not main rivers under the Land Drainage Act 1991; and, the prohibition on destroying or removing certain hedgerows without permission from the local planning authority. These are consents for activities which are a necessary part of the project. Therefore, in order to provide certainty that the project can proceed, the Order disapplies the requirement for additional consents.

Paragraph (3) disapplies section 6 of the Party Wall etc. Act 1996¹³ so removing the need for the Undertaker to issue a notice to an adjoining landowner or to secure the consent of that landowner before carrying out any excavation or erection of a building or structure. The purpose of this paragraph is to avoid works which have been authorised by the Order being held up by the process for making party wall awards under the Party Wall Act and it is based on provisions in the Crossrail Act 2008¹⁴.

Article 10 (*Abatement of works abandoned or decayed*) deals with the situation where the Undertaker has allowed the works below mean high water springs (or in some circumstances above mean high water springs) to fall into disrepair or has abandoned them. The Secretary of State may require the Undertaker to repair them, failing which he or she may do so themselves and recover the expense of doing so from the Undertaker. This article follows model provision 22.

Article 11 (*Defence to proceedings in respect of statutory nuisance*) provides the Undertaker with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990 under the following circumstances:

¹² 1991 c.56, 1991 c.59, and 1997 No.1160.

¹³ 1996 c.40

¹⁴ 2008 c.18

- if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974; or
- that the nuisance complained of is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- that the nuisance is attributable to a use of the authorised project that is in accordance with a scheme of noise mitigation agreed with the relevant planning authority as described in the requirements; or
- that it is a consequence of the use of the authorised project and cannot reasonably be avoided.

This is consistent with the wording of general model provision 7. Further information on the defence against statutory nuisance can be found in the Statement provided for the purposes of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (**Application reference 7.3**).

PART 3

Streets

Article 12 (*Street works*) authorises the Undertaker to interfere with, and execute works in or under streets specified in Schedule 2 to the Order and carry out work in connection with the placing, maintaining or moving of apparatus for the purposes of the authorised development. The wording mirrors model clause 8.

Article 13 (*Temporary stopping up of streets*) provides for the temporary stopping up of streets and is based on general model provision 11. The definition of streets encompasses any public rights of way. Reasonable alternative access must be provided if there would otherwise be no access. In the case of the streets specified in Schedule 3 to the Order, the Undertaker is required to consult the street authority prior to the proposed temporary stopping up. In the case of any other street that may be temporarily stopped up, the street authority is required to give its consent before the street may be stopped up and may attach reasonable conditions to any consent given. Provision is made for the payment of compensation to any person who suffers loss as a result of the suspension of any private right of way under the article (paragraph 5). General model provisions 9 and 10 have not been included in the Order as no streets or other public rights of way will be permanently stopped up under the terms of the Order.

Article 14 (*Access to works*) is based on general model provision 12 and confers power on the Undertaker to provide or improve access at the location specified in Schedule 4 to the Order or, with the consent of the planning authority following consultation with the highway authority, at any other location within the Order limits.

Article 15 (*Agreements with street authorities*) is based on general model provision 13 and authorises the Undertaker to enter into agreements with street authorities relating to the construction of new streets, works in or affecting streets and the stopping up, alteration and diversion of streets authorised under the Order.

PART 4

Supplemental Powers

Article 16 (*Discharge of water*) enables the Undertaker to discharge water into any watercourse, public sewer or drain, in connection with the construction and maintenance of the authorised project with the approval and (if provided) superintendence of the person to whom it belongs (such approval may be subject to reasonable terms and conditions but shall not be unreasonably withheld). In paragraph (7) the wording of general model provision 14 has been updated to refer to the environmental permitting regime introduced by the Environmental Permitting (England and Wales) Regulations 2010¹⁵. Article 16(9) has been inserted to take account of consideration of matters arising under section 150 of the 2008 Act. Under section 120(5)(a) of the 2008 Act a development consent order may "*apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order*". Section 150 confines the power conferred by section 120(5)(a) which would otherwise enable provisions to be included in the Order the effect of which is to override the requirement for consent which may be required under another enactment. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 identifies a number of consents and authorisations which are prescribed for the purposes of section 150 of the 2008 Act in respect of England and Wales. These include consents under the Land Drainage Act 1991¹⁶ and the Water Resources Act 1991¹⁷. The Company understands that separate consent applications will be required in respect of any matters authorised by article 16 that are within the jurisdictional remit of the Agency. Accordingly article 16(9) has been inserted into the Order to exclude from the scope of the article any consents that otherwise have to be obtained directly from the Environment Agency.

Article 17 (*Protective work to buildings*) follows general model provision 15 and would authorise the Undertaker to carry out protective works to any building within the Order limits as defined in that article where it considers it necessary or expedient in advance of, during or up to five years after, the carrying out of any part of the authorised project in the vicinity of the building. The Undertaker may enter the building and land in its curtilage for the purposes of deciding how to exercise its powers. The Undertaker may also enter the building, land within its curtilage or adjacent land to carry out the protective works. The Undertaker must (except in an emergency) give not less than 14 days' notice to owners and occupiers of its intention to exercise the powers. The article provides that the owner of a building may question whether the works are necessary.

¹⁵ S.I. 2010/675

¹⁶ 1991 c.59.

¹⁷ 1991 c.57.

Provision is made for the payment of compensation in relation to loss or damage caused by the Undertaker in carrying out the protective works and where, within 5 years, the protective works appear to have been inadequate.

Article 18 (*Authority to survey and investigate the land*) is based on general model provision 16 and confers on the Undertaker a power to enter land for the purposes of surveying or investigating it, making trial holes, carry out ecological or archaeological investigations and to place and leave apparatus on the land subject to giving the owner of the land at least 14 days notice. Provision is made for the payment of compensation.

Article 19 (*Removal of human remains*) requires the Undertaker, before it carries out any development or works which will or may disturb any remains, to remove those remains. Before removing any human remains, the Undertaker is required to publish notice of its intention to do so. Notice is also required to be displayed near the site and a copy of the notice sent to the local authority. Any relative or personal representative of any deceased person whose remains are proposed to be removed may undertake the removal of the remains themselves and arrange for those remains to be re-interred or cremated, the Undertaker being responsible for the reasonable costs in doing so. In the event that such relative or personal representative does not remove the remains, the Undertaker is required to comply with any reasonable request the relative or personal representative may make in relation to the removal and re-interment or cremation of the remains. Any dispute which may arise as to whether a person is the relative or personal representative of the person whose remains are proposed to be removed or as to the identity of the remains in question is to be determined in the county court. The Undertaker is required to certify to the Registrar General the date of re-interment or cremation and the place from which the remains were removed and the place where the remains were re-interred or cremated. A copy of the certificate is required to be sent to the local authority. The removal of any remains by the Undertaker is required to be carried out in accordance with any directions which may be given by the Secretary of State. Article 19 follows general model provision 17.

PART 5

Powers of Acquisition

Article 20 (*Compulsory acquisition of land*) would authorise the compulsory acquisition of land shown on the land plan (**Application reference 2.3.2**) and described in the Book of Reference (**Application reference 4.3**) so far as is required for the authorised project or to facilitate or is incidental to it. This article also makes provision for the extinguishment of rights, trusts and incidents to which the land was previously subject to. Provision is made for the payment of compensation. The powers of acquisition are conferred equally upon Bizco 2 (article 20(1)) and Bizco 3 (article 20(2)). A detailed explanation of the powers being sought is contained in the Statement of Reasons (**Application reference 4.2**).

Article 21 (*Compulsory acquisition of land – incorporation of the mineral code*) is based on general model provision 19 and provides for the incorporation of the Statutory Minerals Code ("Code") set out at Schedule 2 of the Acquisition of Land Act 1981 to be incorporated into the Order.

Article 22 (*Time limit for exercise of authority to acquire land compulsorily*) gives the Undertaker seven years to issue 'notices to treat' or a 'general vesting declaration' to acquire the land that is subject to the power of compulsory purchase. These are the two main procedural methods by which the process of acquiring land is undertaken should the Order be made. Section 154(3) of the 2008 Act provides that where an order granting development consent authorises the compulsory acquisition of land, steps of a prescribed description must be taken in relation to the compulsory acquisition before the end of the prescribed period or such other period (whether longer or shorter than that prescribed) as is specified in the Order. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 prescribes the period for the purposes of s.154(3) for the service of a notice to treat as 5 years from the date on which the Order granting development is made. Notice to treat is the only step of a prescribed description referred to in Regulation 3(2) and general vesting declaration is not referred to. The longer period of seven years provided for under article 22 is required because of the scale and complexity of the works, and the lead in time required for contract award and turbine procurement.

Article 23 (*Compulsory acquisition of rights*) enables the Undertaker to acquire rights by the creation of new rights. Paragraph (2) departs from the general model provisions in providing that in the case of the Order land specified in Schedule 5 (land in which only new rights etc. may be required) the Undertaker's compulsory powers are limited to the acquisition of such new rights as may be required for the purposes specified in relation to that land in column (2) of Schedule 5. A similar provision was included in the Network Rail (Nuneaton North Chord) Order 2010. Paragraph (4) provides that the Undertaker may not be compelled to acquire a greater interest in the land. Provision is made for the payment of compensation to anyone who suffers loss by the exercise of the powers conferred under the article. Paragraphs (2), (3) and (4) depart from the general model provisions in providing that in the case of the lands specified in Parts 1, 2 and 3 of Schedule 5, rights may only be exercised for specified purposes. In particular articles 23(3) and (4) have been drafted to facilitate the exercise by both Bizco 2 and Bizco 3 of powers to acquire rights in circumstances where rights over land identified in Part 2 and Schedule 5 may be required by Bizco 2 for the purposes of the construction of part of the Project A Onshore Works but that this will involve an impact on part of the cable corridor forming part of the Project B Onshore Works. Accordingly the provision requires the consent of Bizco 3 to that right being exercised. Article 23(4) contains corresponding provisions for the benefit of Bizco 3 over the Project A Onshore Works bearing in mind the conditions specified in Part 3 of Schedule 5. The relationship between Bizco 2 and Bizco 3 to initiate the construction of the Works will be regulated by an agreement entered into under article 34 (Power to Make Agreements). Further information and

details on the rights being acquired is set out in the Statement of Reasons (**Application reference: 4.2**).

Article 24 (*Private rights of way*) extinguishes any private rights of way across land being acquired compulsorily from the time that it is taken possession of, or, if it is being occupied temporarily, suspends such rights for the duration of the temporary occupation. Compensation is payable to anyone who suffers loss from such an extinguishment. The general provision may also be varied in individual cases.

Article 25 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) applies the provisions of the 1981 Act to compulsory acquisition under the Order. Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of a notice to treat). They allow title in the land to pass to the acquirer more quickly than using the notice to treat method, and also allow several parcels to be acquired at once. The article is identical to general model provision 23.

Article 26 (*Rights under or over streets*) allows the Undertaker to occupy land above or below streets within the Order limits without having to acquire the land. If there are any structures below the street then compensation is payable for any loss or damage. The article is identical to general model provision 27.

Article 27 (*Temporary use of land for carrying out the authorised project*) allows the land coloured blue on the Land Plan (**Application reference 2.3.2**) to be occupied temporarily while the works are carried out, and also any of the land for permanent acquisition (i.e. coloured pink) that has not yet been taken possession of. The article is the same as general model provision 28 except that in paragraph (5), the words 'the provisions of' have been deleted.

Article 28 (*Temporary use of land for maintaining authorised project*) allows land within the Order limits (that has not been acquired) to be entered onto during a five year period after the works are complete for maintenance purposes. Houses or occupied buildings cannot be entered into under this provision, 28 days' notice must be given, and compensation must be paid for any loss or damage. The article is identical to general model provision 29.

Article 29 (*Statutory undertakers*) is modelled on general model provision 31 and allows the Undertaker to acquire land shown on the land plan and described in the Book of Reference (**Application reference 4.3**) that belongs to statutory undertakers, and to extinguish rights in apparatus or remove or reposition apparatus. It is subject to the protective provisions set out in article 42 of, and Schedule 8 to, the Order (for Protective Provisions).

Article 30 (*Recovery of costs of new connections*) provides for the payment of compensation to owners or occupiers of property where apparatus has been removed under the powers conferred on the Undertaker by article 29 and is identical to general model provision 33.

Article 31 (*Application of landlord and tenant law*) overrides the application of landlord and tenant law insofar as it may prejudice agreements for the operation etc., of the authorised project. Article 31 follows general model provision 35.

Article 32 (*Special category land*) – under Section 132 of the 2008 Act an order granting development consent is subject to Special Parliamentary Procedure when it authorises compulsory acquisition of a right over land to which Section 132 applies. The exception is if the Secretary of State is satisfied that certain tests under Section 132(2) are met. Land specified in article 32(3) may be released from all rights, trusts and incidents to which that land was previously subject without the requirement for the undertaker to provide replacement land in accordance with Section 132(2) of the 2008 Act. Under Section 132 of the 2008 Act, as amended by section 24 of the Growth and Infrastructure Act 2013, an order granting development consent shall not be subject to Special Parliamentary Procedure if the Secretary of State is satisfied that the special category land when burdened with the order rights will be no less advantageous to affected persons than it was before the imposition of the order rights. Under the terms of the Order an area of land, part of the foreshore near landfall of the offshore cables, forms a special category of land subject to protection under Section 132 of the 2008 Act. Further justification on this is provided within the Statement of Reasons (**Application reference 4.2**), which explains that the Company considers the rights proposed to be acquired over the area of special category land identified is of limited impact, and as a result the Company considers that the Secretary of State can so be satisfied that the order shall not be subject to Special Parliamentary Procedure.

Article 33 (*Power to make agreements*) – article 33 is distinct from article 7 (Benefit of Order) in that it makes provision for of the Undertaker to facilitate the optimum contracting mechanism in order to deliver the benefits identified in Section 5 above and the introduction of a competitive framework for securing of licences build, own and operate offshore generation and transmission assets. The Order confers powers upon the Undertaker, which is defined in article 2 as being Bizco 2 in respect of the Project A Offshore Works and the Project A Onshore Works, and Bizco 3 in relation to the Project B Offshore Works and the Project B Onshore Works and in relation to the shared works Bizco 2 or Bizco 3. Article 20 (Compulsory Acquisition of Land) mirrors this distinction. Article 34 enables Bizco 2 and Bizco 3 to enter into agreements with each other to ensure that the construction and operation of the Works are carried out as efficiently as possible and reflects the fact that the construction of two projects in very close proximity to one another will require close co-operation between Bizco 2 and Bizco 3. Accordingly, article 33 facilitates the entry by Bizco 2 and Bizco 3 into agreements where powers may be exercised by either party or jointly. This is particularly important given the requirements for close working between the cable corridors and the fact there are a number of shared works (Works No.s 2T, 7, 7L, 9 and Works No.s 10A to 10J). Article 33(3) is required to ensure that agreements entered into under article 33 will be subject to all of the provisions that would apply if the powers being exercised under an agreement were exercised by either Bizco 2 or Bizco 3 alone. Article 33(4) recognises that it will be necessary for Bizco 2 and Bizco 3 to have access to each other's land required for the

Project A Offshore and Onshore Works and the Project B Offshore and Onshore Works to enable each Bizco to construct its respective works, and article 33(4) is intended to facilitate that.

Article 33(7) provides that Bizco 2 and Bizco 3 may enter into agreements for the permanent vesting of land, works and statutory powers in relation to the works authorised by the Order and land required for those works.

This is not a model provision, but has been included within the Order for the public benefit in order to provide clarity and comfort in relation to the way the two companies will operate together. The article effectively fetters unlimited commercial agreements and ensures that this is carried out in a transparent manner.

Article 34 (*Railway and navigation undertakings*) is the same as general model provision 34 and requires the consent of a railway or navigation undertaking to break up any street in their control or to interfere with any level crossing, except in an emergency, although the Order does not seek powers that will affect any level crossing.

PART 6

Miscellaneous and General

Article 35 (*Trees subject to tree preservation orders*) provides for the Undertaker to fell and top trees that are subject of tree preservation order and is in the same form as general model clause 40. An area which is subject to this designation has been identified just within the Order limits, so a specific plan has been produced. This article has also been included to deal with trees which may be designated prior to construction of the development, given the timescales involved.

Article 36 (*Operational Land for purposes of the 1990 Act*) provides that for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990¹⁸ ("cases in which land is to be treated as operational land for the purposes of that Act"), the development consent granted by the Order shall be treated as specific planning permission. The purpose of this is to ensure that permitted development rights under Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995¹⁹ will apply in relation to the onshore works authorised by the Order. This article follows model provision 36.

Article 37 (*Felling or lopping of trees*) enables the Undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised project. Provision is made for the payment of compensation to any person who suffers loss as a result of the exercise of the powers granted by the article. Article 38 follows general model provision 39.

¹⁸ 1990 c.8.

¹⁹ S.I. 1995/418

Article 38 (*Deemed licences under the Marine and Coastal Access Act 2009*) deems the granting of Marine Licences, which is a licence to deposit or build on the sea bed below mean high water springs in respect of each of the NSIPs proposed to be authorised as part of the project. Under the Marine and Coastal Access Act 2009, since 1 April 2011 the two previous permissions of a consent under section 34 of the Coast Protection Act 1949 and a licence under Part 3 of the Environment Protection Act 1990 have been combined into a single 'Marine Licence'. The drafting of the article reflects the combining of the model provisions for the two previous permissions into the single new permission. Schedule 7 contains the terms applicable to all four licences and the conditions attached to each of them in respect of the works as defined in article 2 of the Order. Further detail on the deemed Marine Licences is provided in section 12 of this document.

Article 39 (*Saving for Trinity House*) provides that the rights and duties of Trinity House, the General Lighthouse Authority, are unaffected by the Order. It is in the same form as model provision 53.

Article 40 (*Crown Rights*) provides a saving for Crown Land. The wording of this article has been agreed with the Crown Estate prior to submission.

Article 41 (*Certification of plans and documents etc.*) requires the Company to submit the Book of Reference (**Application reference 4.3**), the plans, the Environmental Statement and any other documents referred to in the Order to the Secretary of State for certification after the making of the Order. This article follows general model provision 41 with amendments relating to the documents specific to this projects.

Article 42 (*Protective provisions*) this article applies Schedule 8 to the Order containing provisions for the protection of the bodies specified in Parts 1 to 4 of that Schedule consequent on the operation of the articles contained in the Order. This includes provisions for statutory undertakers, Network Rail infrastructure, electronic communications code networks and offshore cables and pipelines.

Article 43 (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration. This article is based on general model provision 42.

SCHEDULES

Schedule 1 (*Part 1 (Authorised Project)*) describes the authorised project comprising the authorised development by reference to Work No.s shown on the offshore and onshore works plans (**Application references: 2.4.1 and 2.4.2**).

Schedule 1 (*Part 2 (Ancillary Works)*) identifies a number of ancillary works for which development consent is conferred.

Schedule 1 (*Part 3 (Requirements)*) sets out certain requirements that the Undertaker must meet in relation to the construction and operation of the authorised project. These

requirements take a similar form to planning conditions. The requirements are based upon the Model Requirements contained in Schedule 4 to the 2009 Order, however they do depart in respect of various project and site specific aspects and to reflect the nature of the development. The model requirements are generic and they are intended to address a wide range of potential development schemes, therefore some of the model requirements are not relevant to the project and have been omitted.

A commentary on the proposed requirements is set out below.

Commentary on Requirements

Requirement 1 - (Interpretation) provides for the interpretation of words and phrases used in Schedule 1 Part 2 (Requirements).

Requirement 2 - (Time Limits) specifies the time limit for commencing the authorised development as the period of seven years from the date of the Order. Section 154 of the 2008 Act provides that the development for which development consent is granted must be begun before the end of the prescribed period or such other period (whether longer or shorter than that prescribed) as is specified in the Order granting the consent. Regulation 3(1) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 prescribes the period for the purposes of Section 154 of the 2008 Act as 5 years. The longer period of seven years provided for is required because of the scale and complexity of the works given the inclusion of two NSIPs within the one Order, and the lead in time required for contract award and turbine procurement.

Requirements 3 to 6 (Detailed offshore design parameters) set out a number of design parameters within which the authorised development may be constructed. Requirement 3 addresses the overall cumulative footprint on the seabed. Requirement 4 addresses the physical characteristics and dimensions of wind turbine generators, spacing requirements and the total rotor swept area for Project A and Project B. This also restricts the foundations of wind turbine generators in line with the parameters used in the environmental assessment. Requirement 5 limits the number and dimensions of offshore platforms and their foundations. Requirement 6 restricts the construction of offshore cables within the Order limits, including their length and quantity and this requirement also captures a commitment to limit the cable protection. The purpose of these restrictions is to ensure that the authorised development is consistent with the assessment made in the Environmental Statement of the impacts associated with different structures and foundation types and dimensions and the associated mitigation.

Requirement 7 (Layout Rules) provides for the general arrangements for the layout of the turbines comprised within Works No.s 1A and 1B to be in accordance with the parameters provided in requirement 4 and section 5.2 of Chapter 5 of the Environmental Statement (**Application reference 6.5**), and agreed with the MMO. This does not follow the model provisions but has been proposed following consultation to reassure other marine users that commitments made in relation to the final design and layout of

wind turbine generators and offshore platforms will be secured and in accordance with the design rules previously discussed.

Requirement 8 (Aviation lighting) makes provision for suitable mitigation to be put in place to safeguard air traffic control services and the operation of aircraft in the vicinity of the project during the lifetime of the authorised development.

Requirement 9 (Offshore Decommissioning) makes provision for agreement to a written decommissioning programme for offshore works which must be put in place prior to the commencement of operation of the offshore works. This is not a model provision but is proposed to ensure compliance with the Energy Act 2004.

Requirement 10 (Offshore safety management) requires the agreement of an Emergency Response and Co-operation Plan before commencement of offshore works, to be given effect once approved. This is a provision that is precededented from previous Electricity Act consents for offshore wind farms with some minor modifications included within the wording as requested by the Marine Coastguard Agency.

Requirements 11 to 15 (Aids to navigation) provide for a number of matters to assist navigation in the vicinity of the authorised development. This includes the provision of aids to navigation and notice to mariners, notification of the progress of works to Trinity House and the UK Hydrographic Office, and the marking of structures. These provisions are consistent with precededented arrangements contained in consents granted under the Electricity Act 1989 for offshore wind farms. Requirement 15 is in accordance with the requirements of the Air Navigation Order 2005.

Requirement 16 (Provision against danger to navigation) requires notice to be given Trinity House if the authorised development falls into disrepair.

Requirement 17 (Stages of authorised development onshore) provides for a written scheme for each stage of the onshore works to be approved in writing by the local planning authority prior to commencement of any of those works and for the works to be carried out in accordance with the approved scheme. Paragraph 8.8 of this document provides further detail on the rationale for splitting the projects into stages.

Requirements 18 and 19 (Detailed design approval onshore) broadly follow the model provisions in requiring approved details post-consent save where details are already contained in plans certified under the Order. Any works to be approved by the relevant planning authority, Redcar & Cleveland Borough Council, are to be in accordance with the approved plans. Requirement 19(2) also includes specific restrictions on the height of the converter station(s) to reflect the basis of assessment in the Environmental Statement and to minimise the impact on visual and landscape arising from onshore works.

Requirement 20 (Provision of landscaping) requires a landscaping scheme to be submitted for approval and approved by the relevant planning authority before the

relevant stage of the onshore works may commence. This follows the provisions within model requirement 7.

Requirement 21 (Implementation and maintenance of landscaping) requires implementation of the approved landscaping scheme referred to in Requirement 20 above and the replacement of trees and shrubs which die within five years of planting. This follows the provisions within model requirement 8.

Requirement 22 (Fencing and other means of enclosure) provides temporary and permanent fencing and other means of enclosure shall be approved before the connection works commence. The construction work shall be securely fenced, temporary fencing removed after completion of the works and the perimeter fencing around Work No. 7 (the onshore converter station(s)) must be in place before it is first used. This requirement is consistent with model requirement 13.

Requirement 23 (Highway Accesses) requires submission for approval by the relevant planning authority of details of any new means of vehicular access to a highway, or for any alteration to any such existing means of access. Compliance with the details is also secured by this requirement. Requirement 23 departs from the model requirement 10 by not requiring an access management scheme. This is because management of construction traffic will be dealt with through the medium of the construction traffic routing and management plan referred to in requirement 33.

Requirement 24 (Surface and foul water drainage) provides that the relevant stage of the onshore works shall not be commenced until details of the surface and foul water drainage systems for that stage have been approved by the relevant planning authority in consultation with the relevant sewage and drainage authority. This wording is consistent with model requirement 14.

Requirement 25 (Archaeology) provides that the onshore works relevant to each stage shall not commence until a written scheme of investigation has been agreed with the relevant planning authority. This follows the principles set out in model requirement 16.

Requirement 26 (Code of Construction Practice (CoCP) and Construction Environment Management Plan (CEMPS)) provides that the onshore works shall not commence until a code of construction practice has been submitted and approved by the relevant planning authority. The code covers a number of construction related matters and shall be implemented as approved unless otherwise agreed. Subsequently each stage of the works must produce their own Construction Environment Management Plan drafted in accordance with the CoCP, which provide additional detail on each specific construction phase. In accordance with model requirement 19 the requirement lists out the specific matters to be included within the CoCP, with further detail provided within the Outline Code of Construction Practice submitted with the application (**Application reference 8.2**)

Requirement 27 (Construction hours) provides for the onshore construction hours on specified days, with none on Sundays or bank holidays with the exception of certain continuous operations, internal fit out, delivery of abnormal loads, works on the foreshore or works required to be carried out in an emergency, which must be agreed with the planning authority in advance. This follows the principles in model requirement 24, albeit with slightly amended working hours to reflect the parameters assessed in the Environmental Statement and the complexities of construction for a project of this scale.

Requirement 28 (control of noise during operational phase) specifies noise limits and operational noise arising from Work No. 7 (the onshore converter station(s)) and the specified locations for measuring the noise. The noise management scheme proposed in model requirement 25 was not considered appropriate for this development, as only a limited number of receptors are affected by operational noise. Instead a fixed noise limit at relevant properties was considered to be simpler, and easier to measure and enforce.

Requirement 29 (Control of artificial light emissions) provides for written details of external lighting proposed to be used for the construction of the onshore works to be submitted and approved by the relevant planning authority. The requirement also requires that Work No. 7 (the onshore converter station(s)) are not brought into operation until a written scheme for the management and mitigation of artificial light during the operation of those works has been submitted to and approved by the local planning authority. This is consistent with model requirement 27, except for the requirement for separate schemes relating to the construction and operation phases of the development.

Requirement 30 (Construction traffic routing and management plan) provides that no stage of the onshore works may commence until written details of a construction phase traffic management plan for the management of construction traffic has been submitted to and approved by the relevant planning authority. This reflects model requirement 22 with the addition of text in paragraph (2) relating to abnormal indivisible loads, which are a distinguishing element of offshore wind farm construction traffic.

Requirement 31 (European protected species) provides that the relevant stage of the onshore works shall not be commenced until a pre-construction survey for that station has been carried out to establish whether any European protected species is present, or likely to be impacted by the works. If so the scheme for protection and mitigation must be approved by the local planning authority before that relevant stage of the works is commenced and any such scheme must be implemented as approved unless otherwise agreed with the local planning authority. This mirrors model requirement 34.

Requirement 32 (Restoration of land used temporarily for construction) provides that any land which is landward mean low water springs and which is used temporarily for the onshore works must be restored to its prior condition or such condition as the relevant planning authority shall approve. This restoration must be carried out within six months of the completion of the onshore works. This generally conforms with model

requirement 35, although reference to the onshore works has been added and the approval of reinstatement has been amended from the Commission to the local planning authority.

Requirement 33 (Interference with telecommunications) provides for a scheme to be submitted to the relevant planning authority in the event of any interference with telecommunications or television equipment arising from the operation of the onshore works. Such a scheme must be carried out in accordance with the approved details, unless otherwise agreed in writing by the relevant planning authority.

Requirement 34 (Onshore decommissioning) makes provision for a scheme for demolition and removal of the onshore works or any part of them on cessation of commercial operations together with proposals for reinstatement of the surface of the land following decommissioning. The proposed scheme will be based upon the onshore element of the decommissioning statement submitted with the application (**Application reference 8.3**) and the scheme must be carried out in accordance with the approved details, unless otherwise agreed by the relevant planning authority.

Requirements numbered 17 to 34 relate to works landward of mean low water springs.

Requirement 35 (Requirement for written approval) provides that where a requirement requires the approval of the Secretary of State, the relevant planning authority or some other person then such approval must be in writing. This is consistent with model requirement 36.

Requirement 36 (Amendments to approved details)

Requirement 36 (*Amendment to approved details*) applies to all of the authorised development and provides for any details approved pursuant to any requirement should be taken to include any amended details which are subsequently approved. This is consistent with model requirement 37.

Requirement 37 (Restricted Work Area)

Requirement 37 (*Restricted Work Area*) applies to all of the offshore authorised development and provides that its construction cannot take place within the restricted work area which has been identified on the offshore works plans. This is not a model provision but it is proposed so as to ensure that no works cross the UK international boundary.

Schedule 2 (Streets subject to street works) sets out those streets which are subject to street works in accordance with article 12.

Schedule 3 (Streets to be temporarily stopped up) identifies the streets, including public rights of way, which may be temporarily stopped up in accordance with article 13.

Schedule 4 (Access to works) sets out the locations where new forms of vehicular access may be created or where such access may be improved in accordance with article 14.

Schedule 5 (Land in which only new rights etc maybe acquired) sets out those lands which are to be subject to the provisions of article 23 of the Order. Article 23 confers power upon the Undertaker to acquire rights over land or extinguish rights over land and in the case of the land specified in Schedule 5 may only exercise the powers of compulsory purchase for the purposes of creating specific rights over land identified in Parts 1, 2 and 3 of the Schedule.

Schedule 6 (Land of which temporary possession may be taken) identifies the plots of land which are proposed to be subject to powers of temporary acquisition for the purpose of carrying out the authorised development conferred under article 28 of the Order.

Schedule 7 (Deemed licences under the Marine and Coastal Access Act 2009) sets out the provisions of the deemed Marine Licences granted by the Order. The general model provisions do not provide a draft deemed Marine Licence and simply refer to the Food and Environmental Protection Act 1985 and the Coastal Protection Act 1949. The licensing provisions under this legislation have been superseded by the marine licensing regime under the Marine and Coastal Access Act 2009 ("the 2009 Act"). The draft licences conditions have been the subject of discussion between the Company and the MMO. Further detail on the structure and reasoning behind the proposed Marine Licences is provided in section 12 of this document.

Schedule 8 (Protective Provisions) contains a number of protective provisions for the benefit of a number of statutory bodies. All of the provisions are based upon recent precedents. The provisions confer protection upon electricity, gas and water undertakers (Part 1), Network Rail Infrastructure Limited (Part 2), operations of electronic communications code networks (Part 3), and owners and operators of offshore cables and pipelines (Part 4).

Deemed Marine Licence 1

Part 1A – (Licensed Marine Activities)

Paragraph 1 (Interpretation) provides an interpretation of certain words and phrases used in respect of the licence for the Project A Offshore works and the contact details of the primary point of contact with relevant organisations including the MMO.

Paragraph 2 (Details of licensed marine activities) describes the project and specifies the licensable marine activities which are authorised by the licence in connection with the construction and operation of the Project A Offshore works.

Part 1B (Licence Conditions)

Paragraphs 3 and 4 (Detailed offshore design parameters) set out the detailed offshore design parameters of the Project A Offshore works and repeats the detailed design parameters from requirements 3 to 6 of Part 3 of Schedule 1 to the Order. It was normal for FEPA licences to include a condition specifying the design limitations which were repeated from the associated Electricity Act 1989 consent.

Paragraph 5 (Layout rules) provides for the general arrangements for the layout of the turbines comprised within Work No. 1A to be in accordance with the parameters provided in requirement 3 and section 5.2 of Chapter 5 of the Environmental Statement. The condition also requires the layout to be agreed with the MMO.

Paragraph 6 (Notifications and inspections) provides for a system of providing copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO, and publicising commencement and progress of the licensed activities.

Paragraph 7 (Chemicals, drilling and debris) restricts the use of chemicals and other substances, the disposal of certain drilling arisings, and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.

Paragraph 8 (Force majeure) provides for the notification of deposits made in an emergency. This only refers to authorised deposits outside the Order limits because deposits within the Order limits would already be authorised.

Paragraphs 9 and 10 (Pre-construction plans and documentation) provides for the submission for approval by the MMO, before the commencement of licensed activities, of: the location and dimensions of wind turbine generators and offshore platforms, a construction and monitoring programme, a construction method statement, a project environmental management and monitoring plan, a marine mammal mitigation protocol (where appropriate), a cable specification and installation plan, and a scheme of archaeological investigation. Each plan must be submitted to the MMO at least four months prior to construction.

Paragraph 11 (Reporting of engaged agents, contractors and vessels) requires the Undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities, and a weekly update as to which vessels are being used during construction.

Paragraph 12 (Equipment and operation of vessels engaged in licensed activities) specifies various equipment and other conditions which vessels used for the licensed activities must be fitted with and comply with.

Paragraph 13 (Pre-construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for preconstruction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

Paragraph 14 (Construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results and allows the MMO to prevent the use of pile installation in certain circumstances.

Paragraphs 15 and 16 (Post construction surveys) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for post construction surveys/monitoring, and provides an indicative list of the expected post-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval. In addition condition 16 requires a maintenance plan to be submitted in relation to the operational phase of the development, in response to a request by the MMO.

Deemed Marine Licence 2

Part 2A – (Licensed Marine Activities)

Paragraph 1 (Interpretation) provides an interpretation of certain words and phrases used in respect of the licence for the Project B Offshore works and the contact details of the primary point of contact with relevant organisations including the MMO.

Paragraph 2 (Details of licensed marine activities) describes the project and specifies the licensable marine activities which are authorised by the licence in connection with the construction and operation of the Project B Offshore works.

Part 2B (Licence Conditions)

Paragraphs 3 and 4 (Detailed offshore design parameters) set out the detailed offshore design parameters of the Project B Offshore works and repeats the detailed design parameters from requirements 3 to 6 of Part 3 of Schedule 1 to the Order. It was normal for FEPA licences to include a condition specifying the design limitations which were repeated from the associated Electricity Act 1989 consent.

Paragraph 5 (Layout rules) provides for the general arrangements for the layout of the turbines comprised within Work No. 1B to be in accordance with the parameters provided in requirement 3 and section 5.2 of Chapter 5 of the Environmental Statement. The condition also requires the layout to be agreed with the MMO.

Paragraph 6 (Notifications and inspections) provides for a system of providing copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO, and publicising commencement and progress of the licensed activities.

Paragraph 7 (Chemicals, drilling and debris) restricts the use of chemicals and other substances, the disposal of certain drilling arisings, and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.

Paragraph 8 (Force majeure) provides for the notification of deposits made in an emergency. This only refers to authorised deposits outside the Order limits because deposits within the Order limits would already be authorised.

Paragraphs 9 and 10 (Pre-construction plans and documentation) provides for the submission for approval by the MMO, before the commencement of licensed activities, of: the location and dimensions of wind turbine generators and offshore platforms, a construction and monitoring programme, a construction method statement, a project environmental management and monitoring plan, a marine mammal mitigation protocol (where appropriate), a cable specification and installation plan, and a scheme of archaeological investigation. Each plan must be submitted to the MMO at least four months prior to construction.

Paragraph 11 (Reporting of engaged agents, contractors and vessels) requires the Undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities, and a weekly update as to which vessels are being used during construction.

Paragraph 12 (Equipment and operation of vessels engaged in licensed activities) specifies various equipment and other conditions which vessels used for the licensed activities must be fitted with and comply with.

Paragraph 13 (Pre-construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for preconstruction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

Paragraph 14 (Construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results and allows the MMO to prevent the use of pile installation in certain circumstances.

Paragraphs 15 and 16 (Post construction surveys) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 9(1)(b) to put forward proposals for post construction surveys/monitoring, and provides an indicative list of the expected post-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval. In addition condition 16 requires a maintenance plan to be submitted in relation to the operational phase of the development, in response to a request by the MMO.

Deemed Marine Licence 3

Part 3A – (Licensed Marine Activities)

Paragraph 1 (Interpretation) provides an interpretation of certain words and phrases used in respect of the licence for the Project A Offshore works and the contact details of the primary point of contact with relevant organisations including the MMO.

Paragraph 2 (Details of licensed marine activities) describes the project and specifies the licensable marine activities which are authorised by the licence in connection with the construction and operation of the Project A Offshore works.

Part 3B (Licence Conditions)

Paragraph 3 (Notifications and inspections) provides for a system of providing copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO, and publicising commencement and progress of the licensed activities.

Paragraph 4 (Chemicals, drilling and debris) restricts the use of chemicals and other substances, the disposal of certain drilling arisings, and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.

Paragraph 5 (Force majeure) provides for the notification of deposits made in an emergency. This only refers to authorised deposits outside the Order limits because deposits within the Order limits would already be authorised.

Paragraphs 6 and 7 (Pre-construction plans and documentation) provides for the submission for approval by the MMO, before the commencement of licensed activities, of: the location of the cable route, a construction and monitoring programme, a construction method statement, a project environmental management and monitoring plan, a marine mammal mitigation protocol (where appropriate), a cable specification and installation plan, and a scheme of archaeological investigation. Each plan must be submitted to the MMO at least four months prior to construction.

Paragraph 8 (Reporting of engaged agents, contractors and vessels) requires the Undertaker to provide to the MMO details of agents and contractors engaged to carry out

the licensed activities, and a weekly update as to which vessels are being used during construction.

Paragraph 9 (Equipment and operation of vessels engaged in licensed activities) specifies various equipment and other conditions which vessels used for the licensed activities must be fitted with and comply with.

Paragraph 10 (Pre-construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for preconstruction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

Paragraph 11 (Construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results and allows the MMO to prevent the use of pile installation in certain circumstances.

Paragraphs 12 and 13 (Post construction surveys) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for post construction surveys/monitoring, and provides an indicative list of the expected post-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

Deemed Marine Licence 4

Part 4A – (Licensed Marine Activities)

Paragraph 1 (Interpretation) provides an interpretation of certain words and phrases used in respect of the licence for the Project B Offshore works and the contact details of the primary point of contact with relevant organisations including the MMO.

Paragraph 2 (Details of licensed marine activities) describes the project and specifies the licensable marine activities which are authorised by the licence in connection with the construction and operation of the Project B Offshore works.

Part 4B (Licence Conditions)

Paragraph 3 (Notifications and inspections) provides for a system of providing copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO, and publicising commencement and progress of the licensed activities.

Paragraph 4 (Chemicals, drilling and debris) restricts the use of chemicals and other substances, the disposal of certain drilling arisings, and the monitoring of construction

materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.

Paragraph 5 (Force majeure) provides for the notification of deposits made in an emergency. This only refers to authorised deposits outside the Order limits because deposits within the Order limits would already be authorised.

Paragraphs 6 and 7 (Pre-construction plans and documentation) provides for the submission for approval by the MMO, before the commencement of licensed activities, of: the location of the cable route, a construction and monitoring programme, a construction method statement, a project environmental management and monitoring plan, a marine mammal mitigation protocol (where appropriate), a cable specification and installation plan, and a scheme of archaeological investigation. Each plan must be submitted to the MMO at least four months prior to construction.

Paragraph 8 (Reporting of engaged agents, contractors and vessels) requires the Undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities, and a weekly update as to which vessels are being used during construction.

Paragraph 9 (Equipment and operation of vessels engaged in licensed activities) specifies various equipment and other conditions which vessels used for the licensed activities must be fitted with and comply with.

Paragraph 10 (Pre-construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for preconstruction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

Paragraph 11 (Construction monitoring) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results and allows the MMO to prevent the use of pile installation in certain circumstances.

Paragraphs 12 and 13 (Post construction surveys) specifies the manner in which the Undertaker shall discharge its obligation under licence condition 6(1)(b) to put forward proposals for post construction surveys/monitoring, and provides an indicative list of the expected post-construction surveys, subject to detailed proposals being put forward by the Undertaker, for approval.

DEPARTMENT OF ENERGY AND CLIMATE CHANGE
2014

Planning Act 2008

Infrastructure Planning (Applications:
Prescribed Forms and Procedure)
Regulations 2009

Regulation 5(2)(c)

**The Dogger Bank (Teesside A and
B) Offshore Wind Farm Order**

Explanatory Memorandum

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