

SCHEDULE 19

Article 45

Compensation to protect the coherence of the national site network

PART 1

Flamborough and Filey Coast Special Protection Area:  
Delivery of measures to compensate for kittiwake loss

1. In this Part—

“FFC” means the site designated as the Flamborough and Filey Coast Special Protection Area;  
“KIMP” means the kittiwake implementation and monitoring plan for the delivery of measures to compensate for the predicted loss of adult kittiwakes from the FFC as a result of the authorised development;

“kittiwake compensation plan” means the relevant principles for kittiwake compensation set out in the document certified as the In Principle Habitats Regulations Derogation, Provision of Evidence, Appendix 1 Flamborough and Filey Coast SPA In Principle Compensation by the Secretary of State for the purposes of this Order under article 37 (Certification of plans etc); and

“KSG” means the Kittiwake Steering Group.

2. The authorised development may not be commenced until a plan for the work of the KSG has been submitted to and approved by the Secretary of State. Such plan must include:

- (a) terms of reference of the KSG;
- (b) details of the membership of the KSG;
- (c) details of the schedule of meetings, timetable for preparation of the KIMP and reporting and review periods; and
- (d) the dispute resolution mechanism.

3. Following consultation with the KSG, the KIMP must be submitted to and approved by the Secretary of State, in consultation with the local planning authority or authorities for the land containing the artificial nest sites, and the relevant statutory nature conservation body. The KSG must be consulted further as required during the approval process.

4. The KIMP must include measures to increase the number of adult kittiwakes available to recruit to the FFC in accordance with the principles contained in the kittiwake compensation plan, must contain the relevant matters identified in section 4.6.3 of the kittiwake compensation plan and must include in particular:

- (a) details of the location where the compensation measures will be delivered and the suitability of the site to deliver the measures (including why the location is appropriate ecologically and likely to support successful compensation);
- (b) details of landowner agreements demonstrating how the land will be bought or leased and assurances that the land management will deliver the ecology objectives of the KIMP;
- (c) details of the design of the artificial nest structures, including the projected number of nests that will be accommodated on the structures, and how risks from avian or mammalian predation and unauthorised human access will be mitigated;
- (d) an implementation timetable for the delivery of the artificial nest structures that ensures all compensation measures are in place to allow four full kittiwake breeding seasons prior to the operation of any turbine forming part of the authorised development;
- (e) a maintenance schedule for the artificial nest structures;

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- (f) details of the proposed ongoing monitoring and reporting on the effectiveness of the measures, including: survey methods; success criteria; adaptive management measures; timescales for the monitoring and monitoring reports to be delivered; and details of the factors used to trigger alternative compensation measures and/or adaptive management measures;
- (g) provision for annual reporting to the Secretary of State, to include details of the number of birds colonising the site including: evidence of birds prospecting; nesting attempts; egg laying; hatching; and fledging, to identify barriers to breeding success and target alternative or adaptive compensation measures;
- (h) details of how natal dispersal and colony interchange with the FFC kittiwake colony should be investigated, potentially using colour-ringing of chicks; and
- (i) minutes from all consultations with the KSG.

**5.** The undertaker must implement the measures as set out in the KIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body and the relevant local planning authority. In particular, no operation of any turbine forming part of the authorised development may begin until four full breeding seasons following the implementation of the measures set out in the KIMP have elapsed. For the purposes of this paragraph each breeding season is assumed to have commenced on 1 March in each year and ended on 30 September.

**6.** The undertaker shall notify the Secretary of State of completion of implementation of the measures set out in the KIMP.

**7.** Results from the monitoring scheme must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body. This must include details of any finding that the measures have been ineffective in securing an increase in the number of adult kittiwakes available to recruit to the FFC and, in such case, proposals to address this. Any proposals to address effectiveness must thereafter be implemented by the undertaker as approved in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.

**8.** Unless otherwise agreed in writing by the Secretary of State or unless the measures set out in the KIMP have already been delivered, the undertaker must not commence construction of Work No.1 until it has first—

- (a) provided a reasonable estimate of the cost of delivery of the compensation measures; and
- (b) put in place either—
  - (i) a guarantee in respect of the reasonable estimate of costs associated with the delivery of the compensation measures; or
  - (ii) an alternative form of security for that purpose, that has been approved by the Secretary of State.

**9.** The artificial nest structures installed under this Part must not be decommissioned without the written approval of the Secretary of State, in consultation with the relevant statutory nature conservation body. The artificial nest structures shall be maintained beyond the operational lifetime of the authorised development if they are colonised, and routine and adaptive management measures and monitoring must continue whilst the artificial nesting structures are in place.

**10.** The approved KIMP includes any amendments that may subsequently be agreed in writing by the Secretary of State, in consultation with the relevant statutory nature conservation body. Any amendments to or variations of the approved KIMP must be in accordance with the principles set out in the kittiwake compensation plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the kittiwake compensation plan.

**11.** In the event of any conflict or inconsistency between the terms of the kittiwake compensation plan and the provisions of this Order, the provisions of this Order shall prevail.

## PART 2

### Alde-Ore Estuary Special Protection Area: Delivery of measures to compensate for the loss of lesser black-backed gull

**12.** In this Part—

“AOE” means the site designated as the Alde-Ore Estuary Special Protection Area;

“LBBGIMP” means the lesser black-backed gull implementation and monitoring plan for the delivery of measures to compensate for the predicted loss of adult lesser black-backed gull from the AOE as a result of the authorised development;

“LBBGSG” means the Lesser Black-Backed Gull Steering Group; and

“lesser black-backed gull compensation plan” means the document certified as the In Principle Habitats Regulations Derogation, Provision of Evidence, Appendix 2 Alde-Ore Estuary SPA In Principle Compensation by the Secretary of State for the purposes of this Order under article 37 (Certification of plans etc).

**13.** The authorised development may not be commenced until a plan for the work of the LBBGSG has been submitted to and approved by the Secretary of State. Such plan must include:

- (a) terms of reference of the LBBGSG;
- (b) details of the membership of the LBBGSG;
- (c) details of the schedule of meetings, timetable for preparation of the LBBGIMP and reporting and review periods; and
- (d) the dispute resolution mechanism.

**14.** Following consultation with the LBBGSG, the LBBGIMP must be submitted to and approved by the Secretary of State, in consultation with the local planning authority or authorities for the land containing the predator control fencing, and the relevant statutory nature conservation body. The LBBGSG must be consulted further as required during the approval process.

**15.** The LBBGIMP must include measures to increase the number of adult lesser black-backed gulls available to recruit to the AOE in accordance with the principles contained in the lesser black-backed gull compensation plan, must contain the relevant matters identified in section 4.6.2 of the lesser black-backed gull compensation plan and must include in particular:

- (a) details of the location where the compensation measures will be delivered and the suitability of the site to deliver the measures (including why the location is appropriate ecologically and likely to support successful compensation);
- (b) details of landowner agreements demonstrating how the land will be bought or leased and assurances that the land management will deliver the ecology objectives of the LBBGIMP;
- (c) details of the design of the predator control fencing including the type of fencing, the area and location of enclosure, and details of any other habitat management measures;
- (d) an implementation timetable for the delivery of the predator control fencing and any other habitat management measures that ensures all compensation measures are in place to allow four full lesser black-backed gull breeding seasons prior to the operation of any turbine forming part of the authorised development;
- (e) a fencing maintenance schedule;

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- (f) details of the proposed ongoing monitoring and reporting on the effectiveness of the measures, including: survey methods; success criteria; adaptive management measures; timescales for the monitoring and monitoring reports to be delivered; and details of the factors used to trigger alternative compensation measures and/or adaptive management measures; and
- (g) minutes from all consultations with LBBGSG.

**16.** The undertaker must implement the measures as set out in the LBBGIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body and the relevant local planning authority. In particular, no operation of any turbine forming part of the authorised development may begin until four full breeding seasons following the implementation of the measures set out in the LBBGIMP have elapsed. For the purposes of this paragraph each breeding season is assumed to have commenced on 1 March in each year and ended on 30 September.

**17.** The undertaker shall notify the Secretary of State of completion of implementation of the measures set out in the LBBGIMP.

**18.** Results from the monitoring scheme must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body. This must include details of any finding that the measures have been ineffective in securing an increase in the number of adult lesser black-backed gulls available to recruit to the AOE and, in such case, proposals to address this. Any proposals to address effectiveness must thereafter be implemented by the undertaker as approved in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.

**19.** Unless otherwise agreed in writing by the Secretary of State or unless the measures set out in the LBBGIMP have already been delivered, the undertaker must not commence construction of Work No.1 until it has first—

- (a) provided a reasonable estimate of the cost of delivery of the compensation measures; and
- (b) put in place either—
  - (i) a guarantee in respect of the reasonable estimate of costs associated with the delivery of the compensation measures; or
  - (ii) an alternative form of security for that purpose, that has been approved by the Secretary of State.

**20.** The predator control fencing installed under this Part must not be decommissioned without the written approval of the Secretary of State, in consultation with the relevant statutory nature conservation body. The predator control fencing shall be maintained beyond the operational lifetime of the authorised development if the site is colonised. The routine and adaptive management measures, and monitoring should continue whilst the fencing is in place.

**21.** The approved LBBGIMP includes any amendments that may subsequently be agreed in writing by the Secretary of State, in consultation with the relevant statutory nature conservation body. Any amendments to or variations of the approved LBBGIMP must be in accordance with the principles set out in the lesser black-backed gull compensation plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the LBBGIMP.

**22.** In the event of any conflict or inconsistency between the terms of the lesser black-backed gull compensation plan and the provisions of this Order, the provisions of this Order shall prevail.

## PART 3

### Haisborough, Hammond and Winterton Special Area of Conservation: Delivery of measures to compensate for cable installation and protection

**23.** In this Part—

“BIMP” means the benthic implementation and monitoring plan for the delivery of measures to compensate for the cable installation and protection in the HHW SAC as a result of the authorised development;

“BSG” means the benthic steering group who will shape and inform the scope and delivery of the BIMP;

“HHW SAC” means the Haisborough, Hammond and Winterton Special Area of Conservation; and

“HHW SAC compensation plan” means the document certified as the In principle Habitats Regulations Derogation, Provision of Evidence, Appendix 3 Haisborough, Hammond and Winterton SAC In Principle Compensation by the Secretary of State for the purposes of this Order under article 37 (Certification of plans etc).

**24.** The authorised development may not be commenced until a plan for the work of the BSG has been submitted to and approved by the Secretary of State. Such plan must include:

- (a) terms of reference of the BSG;
- (b) the membership of the BSG;
- (c) details of the schedule of meetings, timetable for preparation of the BIMP and reporting and review periods; and
- (d) the dispute resolution mechanism.

**25.** The BSG must be consulted on the proposed BIMP prior to the submission to the Secretary of State and must be consulted further as required during the approval process.

**26.** The undertaker will meet with and report to the BSG at least annually throughout the establishment and implementation phases of the BIMP and document the conclusions of the meetings.

**27.** The BIMP must be submitted to and approved by the Secretary of State, in consultation with the MMO and the relevant statutory nature conservation body.

**28.** The BIMP must accord with the relevant principles contained in the HHW SAC compensation plan, must contain the relevant matters identified in paragraph 141 of the HHW SAC compensation plan and must include provision for:

- (a) the identification and retrieval of marine debris; and
- (b) education, awareness and facilities to limit further marine debris,

which are described as Strand 2 and Strand 3 respectively in section 4.3.4 of the HHW SAC compensation plan.

**29.** The BIMP must include in particular:

- (a) details of any further survey work required to confirm the presence and condition of marine debris;
- (b) details of the location, nature and size of material to be removed from the HHW SAC, which should equate to no less than 8.3 hectares to compensate for the predicted effects of cable installation and protection;

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- (c) a method statement for its removal, to include the vessel type, tools used and mitigation for how impacts on the surrounding habitat will be minimised;
- (d) a programme of works for removal which must ensure that 8.3 hectares of marine debris has been removed prior to commencement of any cable installation works in the HHW SAC;
- (e) proposals for monitoring in accordance with the principles set out in the HHW SAC compensation plan as well as proposals for reporting of monitoring;
- (f) success criteria, adaptive management measures, details of alternative search areas outside the HHW SAC to remove the required quantum of marine debris if 8.3 hectares cannot be recovered from the HHW SAC itself and details of further marine debris removal work that might be carried out if the actual effects of cable installation and protection on the HHW SAC are greater than anticipated;
- (g) programme of delivery for education, awareness and provision of facilities to reduce further marine debris from affecting the HHW SAC;
- (h) details of how all impacts to protected reef habitats within designated sites will be avoided; and
- (i) details of the locations for the disposal of dredged material, and evidence that the disposal mechanism will allow sediment to be retained within the sandbank system and avoid impacts to other features, particularly reef habitats.

**30.** The BIMP must be carried out as approved, unless otherwise agreed in writing by the Secretary of State in consultation with the MMO and the relevant statutory nature conservation body. In particular, no cable installation works in the HHW SAC may be commenced unless at least 8.3 hectares of marine debris has been removed in accordance with the programme referred to in paragraph 29(d).

**31.** Unless otherwise agreed in writing with the Secretary of State, prior to the commencement of any cable installation works in the HHW SAC, the undertaker must—

- (a) provide a reasonable estimate of the cost of delivery of the compensation measures; and
- (b) put in place either—
  - (i) a guarantee in respect of the reasonable estimate of costs associated with the delivery of the compensation measures; or
  - (ii) an alternative form of security for that purpose, that has been approved by the Secretary of State.

**32.** Results from the monitoring scheme must be submitted at least annually to the Secretary of State, the MMO and the relevant statutory nature conservation body. This must include details of any finding that the measures have been ineffective in securing an improvement in the condition of the HHW SAC and, in such case, proposals to address this. Any proposals to address effectiveness must thereafter be implemented by the undertaker as approved in writing by the Secretary of State in consultation with the MMO and the relevant statutory nature conservation body.

**33.** A report which demonstrates completion of the activities required by the BIMP must be submitted to the Secretary of State within 12 months of completion of such activities and following approval of the report by the Secretary of State, in consultation with the MMO and the statutory nature conservation body, the undertaker will be discharged from any further obligations under this Part.

**34.** The approved BIMP includes any amendments that may subsequently be agreed in writing by the Secretary of State, in consultation with the MMO and the relevant statutory nature conservation body. Any amendments to or variations of the BIMP must be in accordance with the principles set out in the HHW SAC compensation plan and may only be approved where it has been demonstrated

to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the HHW SAC compensation plan.

**35.** In the event of any conflict or inconsistency between the terms of the HHW SAC compensation plan and the provisions of this Order, the provisions of this Order shall prevail.