

MONA OFFSHORE WIND PROJECT

Draft Development Consent Order: Explanatory Note

April 2023
Rev01

Image of an offshore wind farm

Mona Offshore Wind Farm - s42 DCO explanatory note



1 INTRODUCTION

- 1.1 This note explains the structure and scope of the draft development consent order (“DCO”) for the proposed Mona Offshore Wind Farm project (“Mona”). It is not an explanatory memorandum which will be required to accompany the DCO submitted as part of the application, but is a high-level summary of the structure, content and scope of the draft DCO for the purposes of statutory consultation under the Planning Act 2008.
- 1.2 The draft DCO will be updated following consultation and a further draft will be submitted to the Planning Inspectorate as part of the application. The current draft includes a number of ‘to be confirmed’ (tbc) and square bracketed ([]) points as well as text in italics. These are indications that that work is ongoing on these points; for example in in Article 1 (interpretation) the plans which are to be confirmed are provided in italics. Cross references are also in square brackets where these are not yet able to be completed or will need to be updated later after any changes are made. There are also ‘fill in bullets’ (●) which note points of detail which would be added by the Secretary of State if they decide to make the order (such as the year of making and the date of coming into force).

2 DEVELOPMENT CONSENT ORDERS

- 2.1 A DCO is a statutory instrument which authorises the construction and operation of a nationally significant infrastructure project (often referred to as an “NSIP”). The descriptions of which projects are NSIPs are set out in the Planning Act 2008. This includes the construction or extension of electricity generating stations above specified capacities. If the Secretary of State grants development consent the DCO will come into force on the date specified.
- 2.2 Mona involves the construction of an offshore wind electricity generation station. As Mona will be mainly situated in Welsh waters, and will generate electricity from wind, with a capacity of more than 350 megawatts (“MW”) it therefore requires a DCO to be obtained to authorise its construction and operation.
- 2.3 In addition to the development that forms part of the NSIP, it is also possible under the Planning Act to include works within a DCO which are needed to construct and operate the NSIP, for example the grid connection works that are needed to connect the offshore wind generation station to the National Grid. These works are known as “associated development”. Schedule 1 of the DCO sets out the various works that comprise the NSIP and the associated development in order to be clear which works fall within each category.
- 2.4 A DCO may also contain other powers including, for example, powers of compulsory acquisition. This document explains the proposed structure of the Mona DCO and the powers which the Applicant for that DCO intends to include within its draft order.
- 2.5 The description of the development for which consent is sought is set out in Schedule 1 of the order. This is referred to throughout the order as either the ‘authorised development’ or by the individual work areas which are listed in Schedule 1. The Mona DCO contains indicative work areas rather than work numbers at this stage and further design is ongoing which will enable more details work numbers to be provided at application.
- 2.6 Schedule 1 is the equivalent of the description of development within a planning permission. It should be read alongside the works plans which indicate the locations of the various proposed works by providing indicative works areas. Following the statutory consultation the identified work areas will be refined and the final locations of the proposed development will be shown on works plans submitted with the DCO application.

- 2.7 Schedule 2 of the DCO sets out the requirements of the order. These function in much the same way as the conditions of a planning permission. For example, they will require the approval of detailed design drawings for the onshore substation and associated landscaping and mitigation works before those works are carried out. They also control the elements of the development to ensure that the impacts remain acceptable and as assessed in the environmental statement.

Deemed marine licence

- 2.8 In addition to the DCO, other consents will be needed to construct and operate Mona, this includes marine licences for works seaward of mean high water. As a result of the location of the Mona generating and transmission infrastructure, different approaches are needed to the necessary marine licences. The DCO includes deemed marine licences (dMLs) for the generation infrastructure for both Natural Resources Wales (NRW) for works in Welsh offshore waters, and the Marine Management Organisation (MMO) for works in English offshore waters. A separate marine licence is needed from NRW for the transmission works. This will be applied for in parallel with the DCO.

Structure and scope of the DCO

3 PART 1 - PRELIMINARY

- 3.1 Part 1 of the order sets out the name of the order and, if granted, will specify the date on which it comes into force.
- 3.2 It also sets out definitions of the terms used throughout the order. Some of these definitions are important to understanding the scope of the authorised development. For example, 'wind turbine generator', 'cable' and 'cable circuit'.
- 3.3 At this stage, some definitions include multiple options; as an example 'foundation' is defined to include multiple types of foundation. This is because at this stage, the particular foundations to be used for each proposed turbine have not yet been finalised and this will not be done until after consent is granted. Where there are options, the assessment in the Preliminary Environmental Information Report (PEIR) assumes that the 'worst case' for each option has been used¹. In the foundation example, that means that the project has considered which type of foundation would have the most impact of any particular category and has assumed that is used across the whole development.

4 PART 2 - PRINCIPAL POWERS

- 4.1 This section sets out the principle powers granted by the proposed order. That includes development consent itself at article 3, consent to operate the generating station at article 4, and consent to maintain the development at article 6.
- 4.2 Article 7 (benefit of the order) provides that the benefit of the order only applies to the named undertaker (in this case Mona Offshore Wind Limited). Whereas planning permissions commonly run with the land to which they relate and are not specific to one developer, development consent orders are restricted to the specific developer (called the 'undertaker') who has been granted that permission. Where any other party wishes to take on the benefit of that order, consent from the Secretary of State may be required to transfer it. This ensures that the Secretary of State can be satisfied before any transfer that the person to whom it is being transferred is a suitable person to operate a nationally significant infrastructure project.

¹ This is commonly referred to as the 'Rochdale envelope' approach. The Planning Inspectorate has published an advice note for NSIP developers on using this approach (advice note nine) which is available on their website at infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-nine-rochdale-envelope/

4.3 DCOs under the Planning Act 2008 are able to modify or exclude the application of certain other legislative provisions. Article 8 of the proposed DCO specifies which legislative provisions this applies to.

4.4 Article 9 (defence to proceedings in respect of statutory nuisance) extends a defence provided to actions for statutory nuisance under the Planning Act to actions brought by individuals as well as by the local authority. This article does not yet set out the relevant actions that will be excluded as this will be determined following full assessment of the residual environmental effects of the project.

5 PART 3 - STREETS

5.1 This section provides authority for Mona to undertake works in or under streets. This will be necessary to facilitate the installation of the onshore cables from landfall to the National Grid substation. This provision allows Mona to install cables under streets and/or to create junctions onto streets to allow access to its construction areas. Mona is also proposing to construct a new access to the substation that will require street works to form an acceptable and safe junction to the public highway.

5.2 In order to allow street works to be carried out safely, these articles allow for the temporary stopping up or restriction on the use of streets. This section also allows for the temporary stopping up or diversion of public rights of way. When the DCO is submitted with the application, a full list of the streets and rights of way which are expected to be affected by this power will be included.

6 PART 4 – SUPPLEMENTAL POWERS

6.1 This section sets out the additional rights and powers necessary to construct and operate the development. These include powers which are necessary before construction of the development commences, such as the authority to survey and investigate land.

6.2 They also provide for practical matters that may be required in the construction or operation of the development. These include matters such as making connections into drains and sewers for the discharge of water, undertaking protective works to protect buildings or for the removal of human remains where they are found within the construction site. (It is noted that, at this stage, this is a precautionary measure as no such remains have been identified within the proposed development area).

7 PART 5 – POWERS OF ACQUISITION

7.1 This part sets out the powers of compulsory acquisition which Mona is seeking. These are very similar to those which could be included in a compulsory purchase order. They would allow the project to compulsorily acquire land or rights in land, and to remove or interfere with the rights of other parties where those could not co-exist with the project.

7.2 The land which would be affected by such powers and the extent of any effect will be detailed in the application version of the documents and in particular, the Book of Reference and land plans.

7.3 DCOs may also include powers for taking temporary possession of land. These are very commonly included within DCOs and would allow Mona to take short-term, temporary possession of land which is required for construction without having to purchase the freehold of that land. Temporary possession also allows a developer to use land which is needed during construction but which is not permanently required for the operation of a NSIP. This approach minimises the land taken for the project.

7.4 Compensation is payable for the exercise of compulsory acquisition and temporary possession powers within the DCO.

- 7.5 Article 33 ensures the funding to pay that compensation is in place ahead of any such powers being used by Mona. The likely compensation liability must be guaranteed to the satisfaction of the Secretary of State.

8 PART 6 – MISCELLANEOUS AND GENERAL

- 8.1 This section sets out a number of general provisions which are necessary to ensure that the development can be constructed and operated as intended.
- 8.2 The felling and lopping of trees and removal of hedgerows ensures that such works can be carried out without the need for an additional consent.
- 8.3 Article 46 provides that arbitration will be the primary method of resolution for disputes under the DCO.

9 SCHEDULES

Schedule 1 – Authorised Development

- 9.1 This schedule sets out the development which is authorised by the DCO. This has been divided into separate ‘work areas’ and a description is provided of what each work area comprises. There are a number of options described within the work areas and we would recommend reading this section in conjunction with the works plans. These are the indicative plans showing work areas for offshore and onshore and they demonstrate the optionality of the project at this stage, along the cable route.
- 9.2 The area around the proposed HVAC substation and National Grid substation connection works have two broad options at this stage. These are identified in the PEIR documents as “Option 2” and “Option 7”. In the DCO they are currently described as Option A and Option B. They are set out on sheets 13-15 and 16-18 respectively of the works plans.
- 9.3 As project design progresses the works plans and work descriptions in Schedule 1 will remove the optionality to result in a single cable route and substation site.
- 9.4 In addition to the numbered work areas, the DCO authorises a range of other associated development. The common items of associated development are listed once rather than being included in every individual work.
- 9.5 The associated development has been split into offshore and onshore sections. The offshore section includes matters such as scour protection and cable protection which are common to many of the offshore elements. The onshore section contains common elements such as means of access, landscaping works, fencing and the provision and restoration of working sites.
- 9.6 Schedule 1 Part 2 also includes ancillary works. These are temporary works which typically do not constitute development but are necessary to allow the construction of the project.

Schedule 2 – Requirements

- 9.7 The requirements set out how the development may be constructed and operated and provide for the approval of certain details after the DCO is granted. They function like conditions on a planning permission.
- 9.8 The requirements include a number of important restrictions for example, the offshore elements of the project are subject to maximum parameters as set out in table 1 in the requirements.
- 9.9 Certain details of onshore elements, including the electrical substation, must also be approved the relevant planning authority in advance of works being carried out to ensure

that matters such as landscaping, construction method statements, soil management plans and highway accesses are all properly controlled.

- 9.10 The requirements allow for the authorised development to be carried out in stages, the details of which must be submitted to the relevant planning authority.
- 9.11 Requirement 9 secures the provision of, and adherence to, a code of construction practice (CoCP) to regulate the construction of the onshore works. The CoCP will include details of all the elements listed in the requirement and must be approved by DCC before any works on any stage commence. An outline CoCP has been provided for consultation as part of the PEIR.
- 9.12 Requirement 11 provides for the undertaking of onshore archaeological investigations prior to the construction of the cable route and substation. This allows for the archaeological investigation works to be carried out after consent is granted but before work begins.
- 9.13 Requirement 14 sets out the hours within which construction can take place, these are limited to 7am to 7pm on Monday to Saturday with no working on Sundays or Bank Holidays. Any works to be undertaken outside these hours need to either be agreed or notified in advance to the relevant planning authority.

Other Schedules

- 9.14 In the final DCO a number of other schedules will be included. These will include lists of all streets and rights of way which will be affected by the powers within the order, details of the activities authorised on land under compulsory powers, and protective provisions in favour of a number of affected parties such as statutory undertakers.