

**The Great Grid Upgrade**

Sea Link

# Preliminary Environmental Information Report

Volume: 1

Part 1 Introduction

Chapter 2 Regulatory and Planning Policy Context

Version A

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**nationalgrid**

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# Sea Link

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# 1.2 Regulatory and Planning Policy Context

## 1.2.1 Introduction

1.2.1.1 This chapter sets out an overview of the regulatory and planning policy framework that applies to Sea Link hereafter referred to as the ‘Proposed Project’, which has been taken into account across all topic chapters in the preparation of this Preliminary Environmental Information Report (PEIR). Additional legislation and policy is applicable to some topics. Any such topic specific legislation is set out in the relevant topic chapters in Parts 1 – 5.

## 1.2.2 Key Legislation

### The Planning Act 2008

1.2.2.1 The Planning Act 2008 (‘the Act’) provides the legislative basis for applications for a Development Consent Order (DCO). It also defines the application process under which a DCO is sought. Section 14 and sections 15 to 30A of the Act sets out that projects meeting certain defined criteria are automatically classified as Nationally Significant Infrastructure Projects (NSIPs).

1.2.2.2 In addition, Section 35(1) of the Act sets out that *“the Secretary of State may give a direction for development to be treated as development for which development consent is required”* if certain criteria (including the type and location of the development) are met.

1.2.2.3 The Act requires that developers wishing to construct, operate and maintain NSIPs or projects subject to a direction from the Secretary of State (SoS) must obtain a DCO from the relevant SoS to authorise their project.

1.2.2.4 On 4 March 2022, the Applicant submitted a request for a direction pursuant to Section 35 of the Act to the SoS for Business, Energy and Industrial Strategy (BEIS)<sup>1</sup> requesting for the Project to be treated as development for which development consent is required. The request was supported by the host authorities. On 31 March 2022, the SoS issued a Direction that confirmed that the Project should be treated as a development for which a DCO under the Act is required. In the Annex to the Direction, the SoS confirmed his opinion that:

*“The proposed Project is of national significance, taking into account that it is a large-scale linear electricity transmission reinforcement project of approximately 130km in length and that it has a two Gigawatt capacity to transmit electricity.”*

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<sup>1</sup> The SoS for BEIS was the relevant SoS at the time of the S.35 request and decision. On 7 February 2023, the Department and SoS for Energy Security and Net Zero (ESNZ) was established to replace the SoS and Department for Business, Energy and Industrial Strategy.

- 1.2.2.5 This PEIR takes account of the national significance of the Proposed Project and that the SoS has directed that it is to be treated as development for which development consent is required.

## The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

- 1.2.2.6 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (the EIA Regulations) govern the EIA process relevant to NSIPs. Schedule 1 of the EIA Regulations lists those projects for which an EIA is required and Schedule 2 lists projects which may be considered an EIA development, based on the selection criteria provided in Schedule 3 on characteristics of the development, its location and the types and characteristics of the potential impacts.
- 1.2.2.7 None of the components which make up the Proposed Project are explicitly identified under Schedule 1 or Schedule 2 of the EIA Regulations. However, National Grid Electricity Transmission plc (National Grid) proposes to undertake an EIA, having considered the criteria in Schedule 3 regarding the characteristics of the development (size of the development and cumulation with other existing and/or approved development) and its location (environmental sensitivity of geographical areas likely to be affected by the development). As such National Grid will be submitting an Environmental Statement (ES) with the DCO application, which will render the Proposed Project as EIA development under Regulation 6 of the EIA Regulations.
- 1.2.2.8 Regulation 14(2) and Schedule 4 of the EIA Regulations set out the information that must be included in an ES. Regulation 12 of the EIA Regulations sets out the meaning of “preliminary environmental information”, stating that it means information referred to in Regulation 14(2) which:

*“(a) has been compiled by the applicant; and*

*(b) is reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development (and of any associated development)”.*

## Marine and Coastal Access Act 2009

- 1.2.2.9 A spatial planning system for the management of the marine environment was introduced by the Marine and Coastal Access Act 2009 (MCAA 2009). This introduced a requirement to obtain Marine Licences for works at sea.
- 1.2.2.10 The Marine Management Organisation (MMO) is responsible, under Part 4 of the MCAA 2009, for administering marine licensing of activities that include construction or removal of any substance or object in UK territorial waters and also for regulating activities where they are undertaken outside of the UK territorial waters e.g. within the UK Exclusive Economic Zone (EEZ). They do so by issuing a Marine Licence.
- 1.2.2.11 The Act enables applicants for a DCO to apply for a ‘Deemed Marine Licence’ as part of the DCO process by virtue of Section 149A of the Act which was inserted by the MCAA 2009.
- 1.2.2.12 In addition, Section 126 of the MCAA 2009 sets out that where a public authority has the function of determining an application that is capable of affecting (other than insignificantly) the protected features of a Marine Conservation Zone (MCZ), or the

processes on which those features depend, then they have a duty to consider MCZs during their decision making.

## Electricity Act 1989

- 1.2.2.13 Section 9(2) of the Electricity Act 1989 places general duties on National Grid as licence holder:

*“to develop and maintain an efficient, co-ordinated and economical system of electricity transmission...”*

- 1.2.2.14 In addition, Section 38 and Schedule 9 of the Electricity Act 1989 requires National Grid when formulating proposals for new lines and other works, to:

*“have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and shall do what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.*

- 1.2.2.15 National Grid's Stakeholder, Community and Amenity Policy (Ref 1.2.1), published December 2016, sets out how the company will meet the Schedule 9 duty placed upon it by the aforementioned legislation.

## 1.2.3 Related Assessments

- 1.2.3.1 In addition to the EIA, the Proposed Project will be assessed in accordance with the other regulatory regimes, where they apply. Information on these is included in the environmental topic chapters of this PEIR where applicable. These include the Conservation of Habitats and Species Regulations 2017, as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (hereafter ‘the Habitats Regulations’) and the Conservation of Offshore Marine Habitats and Species Regulations 2017.

### Habitats Regulations

- 1.2.3.2 The SoS is required by the Habitats Regulations to consider whether a plan or project has the potential to have an adverse effect on the integrity and features of a site which is part of the National Site Network or a European Site. ‘European Sites’ include Special Protection Areas (SPA) and Special Areas of Conservation (SAC). The Habitats Regulations require an Appropriate Assessment if a project is likely to have a significant effect on a National Site Network site or a European Site. A Habitat Regulations Screening Report is provided at **Volume 1, Part 5, Chapter 3, Habitat Regulations Screening Report**.

## 1.2.4 National Planning Policy

- 1.2.4.1 This section sets out the current national planning policy documents that are expected to be important and relevant to the SoS consideration of the DCO application for the Proposed Project, and contain information that may be relevant to the assessment of environmental effects. These documents have been taken into account in preparing this PEIR.

## National Policy Statements for Energy

1.2.4.2 The following NPSs are expected to be important and relevant to the SoS' determination of the DCO application for the Project.

- Overarching National Policy Statement for Energy (EN-1), July 2011 (NPS EN-1);
- National Policy Statement for Renewable Energy Infrastructure (EN-3), July 2011 (NPS EN-3), and
- National Policy Statement for Electricity Networks Infrastructure (EN-5), July 2011 (NPS EN-5).

1.2.4.3 NPS EN-1, NPS EN-3 and NPS EN-5 are discussed below.

### Overarching National Policy Statement for Energy (EN-1)

1.2.4.4 NPS EN-1 sets out the Government's overarching policy with regard to the development of NSIPs in the energy sector. It emphasises the need and urgency for new energy generation, transmission and distribution projects to contribute to a secure, diverse and affordable energy supply. This is to support the Government's policies on sustainable development, in particular by mitigating and adapting to climate change.

1.2.4.5 Section 3.7 in NPS EN-1 states that current scenarios show significant potential increases in generation and changes in direction of net electricity flows from Eastern England to centres of demand in the Midlands and South East England and that these kinds of flows of power cannot be accommodated by the existing network and new lines will have to be built. It also acknowledges in Paragraph 3.7.10 that:

*"in most cases, there will be more than one technological approach by which it is possible to make such a connection or reinforce the network (for example, by overhead line or underground cable) and the costs and benefits of these alternatives should be properly considered as set out in EN-5 before any overhead line proposal is consented"*.

1.2.4.6 Part 5 of NPS EN-1 sets out generic impacts in respect of matters such as air quality and emissions, biodiversity, dust and odour, flood risk, historic environment, landscape, land use, noise and vibration, socio-economic, traffic and transport and waste management. These sections have been considered in the preparation of this PEIR.

### National Policy Statement for Renewable Energy Infrastructure (EN-3)

1.2.4.7 NPS EN-3 sets out planning policy for renewable energy generating NSIPs, including offshore wind. The Proposed Project is not of a type covered by NPS EN-3. However, by virtue of its coverage of offshore wind, NPS EN-3 includes policies relating to marine cabling. The content of NPS EN-3 has been considered in this PEIR to the extent that it is relevant to the Proposed Project, in particular, in relation to the proposed Offshore Scheme.

### National Policy Statement for Electricity Networks Infrastructure (EN-5)

1.2.4.8 NPS EN-5 relates to electricity networks and Part 2 includes specific policies relating to matters including consideration of good design, biodiversity and geological conservation, landscape and visual and noise and vibration. These policies have also been considered in the preparation of this PEIR.

1.2.4.9 Paragraph 2.2.6 of EN-5 reiterates the duties under Section 9 of the Electricity Act 1989, both in relation to developing and maintaining an economical and efficient network and, in formulating proposals for new electricity network infrastructure, to *“have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and ... do what [they] reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects”*.

### **Draft Energy National Policy Statements**

1.2.4.10 The following Draft Energy NPSs have also been considered in this PEIR:

- Draft Overarching National Policy Statement for Energy (EN-1), March 2023 (Draft NPS EN-1);
- National Policy Statement for Renewable Energy Infrastructure, March 2023 (Draft NPS EN-3); and
- Draft National Policy Statement for Electricity Networks Infrastructure (EN-5), March 2023 (Draft NPS EN-5).

1.2.4.11 The Government is currently reviewing and updating the Energy NPSs. It is doing this to reflect its policies and strategic approach for the energy system that is set out in the Energy White Paper (December 2020) and the British Energy Security Strategy (BESS) (April 2022), and to ensure that the planning policy framework enables the delivery of the infrastructure required for the country’s transition to net zero carbon emissions. As part of the Energy NPS review process, the Government published a suite of Draft Energy NPSs for consultation on 30 March 2023. The March 2023 Draft Energy NPSs follow and supersede the previous draft versions published in 2021. The Government’s Nationally Significant Infrastructure: Action Plan for Reforms to the Planning Process, published 23 February 2023 sets out that the suite of updated Energy NPSs (including Draft NPS EN-1 and Draft NPS EN-5) will be designated by quarter two of 2023. However, the consultation period on the draft energy NPS documents was extended until Friday 23 June 2023 and the Government is now considering the responses it received. It is estimated that the updated Energy NPSs will be designated at the end of 2023.

1.2.4.12 Draft NPS EN-1 sets out general principles and impacts to be considered for all types of energy NSIP covered by the draft Energy NPSs. Once designated it will form the primary basis for determining if development consent should be granted for developments covered by the draft Energy NPSs. It is underpinned by the principle that there will be a need for significant amounts of new large-scale energy infrastructure to meet the Government’s energy objectives. It states at paragraphs 2.1.1 and 2.3.6 that the energy system needs to be transformed by *“...tackling emissions while continuing to ensure secure and reliable supply, and affordable bills for households and businesses”*.

1.2.4.13 Paragraph 1.3.10 of Draft EN-1 states that in circumstances where the SoS has given a Section 35 direction: *“[NPS] EN-1, in conjunction with any relevant technology specific NPS, will be the primary policy for Secretary of State decision making on projects in the field of energy for which a direction has been given under section 35”*.

- 1.2.4.14 Draft NPS EN-3 covers renewable energy infrastructure, which includes “...*offshore transmission infrastructure projects in English waters which are directed into the NSIP regime under section 35 of the Planning Act 2008. This would include... ..‘bootstraps’ to support the onshore network which are routed offshore.*” It also sets out at paragraph 3.8.12 that the “*Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant new offshore wind development and supporting onshore and offshore network infrastructure and related network reinforcements*”. The Proposed Project is consistent with the description of CNP infrastructure.
- 1.2.4.15 Like its predecessor, Draft NPS EN-5 covers electricity networks and focuses on policies and considerations that are specific to this type of energy infrastructure. It sets out at paragraph 1.6.2 that electricity infrastructure, including underground cables, sub-sea cables and associated infrastructure, will be covered by the NPS if the SoS gives a direction under Section 35 of the 2008 Act that it should be treated as an NSIP.

## National Planning Policy Framework

- 1.2.4.16 The revised National Planning Policy Framework (NPPF) was most recently revised in July 2021. Paragraph 5 of the NPPF sets out that it does not contain specific policies for NSIPs and states that “*These are determined in accordance with the decision-making framework in the Planning Act 2008 (as amended) and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the National Planning Policy Framework)*”.
- 1.2.4.17 Since the NPPF has the potential to be considered important and relevant to the SoS’ consideration of the Project, each topic chapter has considered whether there is guidance in the NPPF that differs from NPS and Draft NPS policies. At this stage it is not possible to determine if such guidance will be considered relevant to, or be given weight by, the SoS, and it is therefore included for completeness to allow the SoS to make such determination.

## 1.2.5 Local Planning Policies

- 1.2.5.1 Regional and local planning policies have also been considered in the preparation of this PEIR. The main local planning policy that could be relevant to the Proposed Project comprises of the following:
- 1.2.5.2 In Suffolk:
- East Suffolk Council – Suffolk Coastal Local Plan (adopted 23 September 2020) (Ref 1.2.2)
  - Suffolk County Council – Suffolk Minerals and Waste Local Plan (adopted 9 July 2020) (Ref 1.2.8)
- 1.2.5.3 In Kent:
- Thanet District Council – Thanet Local Plan (adopted 9 July 2020) (Ref 1.2.3)
  - Dover District Council – Core Strategy (adopted 24 February 2010) (Ref 1.2.4)
  - Dover District Council – Land Allocations Local Plan (adopted 28 January 2015) (Ref 1.2.5)

- Dover District Council – Saved Policies of the Dover District Local Plan 2002 (adopted 2002) (Ref 1.2.6)
- Dover District Council – Draft Local Plan to 2040, Regulation 19 Submission (October 2022) (Ref 1.2.7)
- Kent County Council - Kent Minerals and Waste Local Plan 2013-2030 (adopted September 2020)
- Kent County Council – Mineral Sites Plan (adopted September 2020) (Ref 1.2.9)

1.2.5.4 A summary of national and local planning policy relevant to each technical assessment is provided for each environmental topic chapter.

## 1.2.6 Marine Policy Statement

1.2.6.1 The Marine Policy Statement was adopted in 2011. This provides the policy framework for the preparation of marine plans and establishes how decisions affecting the marine area should be made. The Marine Policy Statement has been considered in the development of this PEIR in particular within the chapters relating to Part 4, the Offshore Scheme.

## 1.2.7 Marine Plans

1.2.7.1 The following Marine Plans have been considered in the preparation of this PEIR:

- East Inshore and East Offshore Marine Plan, April 2014 (Ref 1.2.10)
- South East Inshore Marine Plan, June 2021 (Ref 1.2.11)

1.2.7.2 A summary of marine policy that is relevant to each technical assessment is provided for each environmental topic chapter.

## 1.2.8 References

Ref 1.2.1 National Grid (2016). National Grid's commitments when undertaking works in the UK: Our stakeholder, community and amenity policy. [online] Available at: [https://www.nationalgrid.com/sites/default/files/documents/National%20Grid\\_s%20commitments%20when%20undertaking%20works%20in%20the%20UK.pdf](https://www.nationalgrid.com/sites/default/files/documents/National%20Grid_s%20commitments%20when%20undertaking%20works%20in%20the%20UK.pdf).

Ref 1.2.2 East Suffolk Council (2020). Suffolk Coastal Local Plan. [online] Available at: <https://www.eastsuffolk.gov.uk/assets/Planning/Planning-Policy-and-Local-Plans/Suffolk-Coastal-Local-Plan/Adopted-Suffolk-Coastal-Local-Plan/East-Suffolk-Council-Suffolk-Coastal-Local-Plan.pdf>.

Ref 1.2.3 Thanet District Council (2020). Thanet Local Plan. [online] Available at: <https://www.thanet.gov.uk/wp-content/uploads/2018/03/LP-adjusted.pdf>.

Ref 1.2.4 Dover District Council (2010). Local Development Framework: Core Strategy. [online] Available at: <https://www.dover.gov.uk/Planning/Planning-Policy/PDF/Adopted-Core-Strategy.pdf>.

Ref 1.2.5 Dover District Council (2015). Land Allocations Local Plan. [online] Available at: <https://www.dover.gov.uk/Planning/Planning-Policy/PDF/Land-Allocations-Local-Plan.pdf>.

Ref 1.2.6 Dover District Council (2002). Saved Policies of the Dover District Local Plan 2002. [online] Available at: <https://www.dover.gov.uk/Planning/Planning-Policy/Adopted-Development-Plans/Dover-District-Local-Plan-2002.aspx>

Ref 1.2.7 Dover District Council (2022). Draft Dover District Local Plan to 2040. [online] Available at: <https://www.doverdistrictlocalplan.co.uk/uploads/Submission-Documents/SD01-Dover-District-Local-Plan-to-2040-Regulation-19-Submission-Document-Oct-22.pdf>.

Ref 1.2.8 Suffolk County Council (2020). Suffolk Minerals and Waste Local Plan. [online] Available at: <https://www.suffolk.gov.uk/planning-waste-and-environment/minerals-and-waste-policy/suffolk-minerals-and-waste-development-scheme/>.

Ref 1.2.9 Kent County Council (2020). Mineral Sites Plan. [online] Available at: [https://www.kent.gov.uk/\\_data/assets/pdf\\_file/0003/112584/Kent-Mineral-Sites-Plan.pdf](https://www.kent.gov.uk/_data/assets/pdf_file/0003/112584/Kent-Mineral-Sites-Plan.pdf).

Ref 1.2.10 Marine Management Organisation (2014). East Inshore and East Offshore Marine Plans. [online] Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/312496/east-plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/312496/east-plan.pdf).

Ref 1.2.11 Marine Management Organisation (2021). South East Inshore Marine Plan. [online] Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1004493/FINAL\\_South\\_East\\_Marine\\_Plan\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004493/FINAL_South_East_Marine_Plan_1_.pdf).

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National Grid plc  
National Grid House,  
Warwick Technology Park,  
Gallows Hill, Warwick.  
CV34 6DA United Kingdom

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No. 4031152  
[nationalgrid.com](http://nationalgrid.com)