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## STATUTORY INSTRUMENTS

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# 2016 No. 844

## The Hornsea Two Offshore Wind Farm Order 2016

### PART 7

#### Miscellaneous and general

##### Operational land for purposes of 1990 Act

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

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##### Commencement Information

**11** Art. 32 in force at 7.9.2016, see [art. 1\(2\)](#)

##### Procedure in relation to approvals, etc. under requirements

**33.** Where an application is made to the local planning authority for any consent, agreement or approval required by a Requirement, the following provisions (so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission) apply in relation to the application as if the Requirement were a condition imposed on a grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act<sup>(1)</sup> (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to appeals under section 78 of the 1990 Act,

insofar as those provisions are not inconsistent with the EIA Regulations and any orders, rules or regulations made under the 2008 Act.

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##### Commencement Information

**12** Art. 33 in force at 7.9.2016, see [art. 1\(2\)](#)

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(1) Section 78 was amended by section 43(2) of the Planning and Compulsory Purchase Act 2004 (c.5), paragraph 3(b) of Schedule 10 to the Planning Act 2008, section 123(3) of, and paragraph 11 of Schedule 12 to, the Localism Act 2011, paragraph 8 of Schedule 1 to the Growth and Infrastructure Act 2013, paragraph 12 of Schedule 4 to the Infrastructure Act 2015 and paragraph 21 of Schedule 12 to the Housing and Planning Act 2016. Section 79 was amended by section 18 of, and paragraph 19 of Schedule 7 to, the Planning and Compensation Act 1991 (c.34), paragraph 4 of Schedule 10 to the Planning Act 2008 and paragraph 23 of Schedule 12 to the Housing and Planning Act 2016.

### Offshore works: abandonment or decay

**34.**—(1) Where the authorised development constructed seaward of MHWS or any part of it is abandoned or allowed to fall into decay, the Secretary of State may, following consultation with the undertaker, by notice in writing require the undertaker at its own expense—

- (a) to repair and restore the authorised development or any part of it;
- (b) to remove the authorised development or any part of it; and
- (c) to restore the site to a safe and appropriate condition within an area and to such an extent as may be specified in the notice.

(2) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice—

- (a) the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice;
- (b) any expenditure incurred by the Secretary of State in doing so is recoverable from the undertaker.

(3) Nothing in this article limits the Secretary of State’s powers under Chapter 3 of Part 2 of the 2004 Act (decommissioning of offshore installations).

#### Commencement Information

**I3** Art. 34 in force at 7.9.2016, see [art. 1\(2\)](#)

### Transfer of benefit of Order

**35.**—(1) Except as otherwise provided in this Order, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) The undertaker may—

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

(3) The consent of the Secretary of State is required for a transfer or grant under paragraph (2), except for—

- (a) a transfer or grant of the benefit of any of the provisions (and any related statutory rights) relating to Work No. 1A or 1B from one undertaker to the other; or
- (b) a transfer or grant of any of the provisions (and any related statutory rights) relating to Work Nos. 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B, 9A, 9B or 10 to a person who holds a licence under section 6 of the 1989 Act.

(4) Where the consent of the Secretary of State is required for a transfer or grant under paragraph (1), the Secretary of State must consult the MMO before giving consent if the proposed transfer or grant is relevant to the exercise of functions within the MMO’s jurisdiction.

(5) Where there is a transfer or grant under paragraph (2)—

- (a) the exercise by the transferee or, as the case may be, by the lessee of any benefit or right conferred by the transfer or grant (the “transferred benefit”) is subject to the same

- restrictions, liabilities and obligations as would apply under this Order if the benefit or right were exercised by the undertaker; and
- (b) the transferred benefit resides exclusively with the transferee or lessee, and any breach of a restriction or an obligation with respect to the transferred benefit is not be enforceable against the person making the transfer or grant, except for a breach occurring before the date of transfer.
- (6) At least 5 days before a transfer or grant under paragraph (2) takes effect, the undertaker must give notice in writing—
- (a) to the Secretary of State; and
- (b) if the transfer or grant is relevant to the exercise of functions within the MMO's or the local planning authority's jurisdiction, to the MMO or the local planning authority (or to both).
- (7) The notice must—
- (a) state—
- (i) the name and contact details of the transferee or lessee;
- (ii) the date on which the transfer or grant takes effect;
- (iii) the provisions transferred or granted; and
- (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (5)(a), apply to the transferee or lessee;
- (b) be accompanied by—
- (i) where relevant, a plan showing the Works or areas to which the transfer or grant relates;
- (ii) where the Secretary of State's consent is needed for the transfer or grant, a copy of the consent; and
- (iii) a copy of the document effecting the transfer or grant signed by the person making the transfer or grant and the transferee or lessee; and
- (c) be signed by the person making the transfer or grant and the transferee or lessee.
- (8) Where there is a transfer or grant under paragraph (2), references in this Order to the undertaker, except in paragraph (5), include references to the transferee or lessee.

**Commencement Information**

**I4** Art. 35 in force at 7.9.2016, see [art. 1\(2\)](#)

**Deemed marine licences under Marine and Coastal Access Act 2009**

**36.** The marine licences set out in Schedules 8 to 11 are deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensed activities set out in Part 1, and subject to the Conditions set out in Part 2, of each licence.

**Commencement Information**

**I5** Art. 36 in force at 7.9.2016, see [art. 1\(2\)](#)

## Saving for Trinity House

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

### Commencement Information

**I6** Art. 37 in force at 7.9.2016, see [art. 1\(2\)](#)

## Crown rights

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

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

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

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

### Commencement Information

**I7** Art. 38 in force at 7.9.2016, see [art. 1\(2\)](#)

## Protective provisions

**39.** Schedule 12 (protective provisions) has effect.

### Commencement Information

**I8** Art. 39 in force at 7.9.2016, see [art. 1\(2\)](#)

## Certification of plans, etc.

**40.**—(1) The undertaker must, as soon as practicable after this Order is made, submit to the Secretary of State copies of the documents listed in Schedule 13 (documents to be certified) for certification that they are true copies of the documents referred to in this Order.

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

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Hornsea Two Offshore Wind Farm Order 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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**Commencement Information**

**I9** Art. 40 in force at 7.9.2016, see [art. 1\(2\)](#)

**Arbitration**

**41.** Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

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**Commencement Information**

**I10** Art. 41 in force at 7.9.2016, see [art. 1\(2\)](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 Pt.03 para. 6(l) words substituted by [S.I. 2016/1104 Sch.](#)
- Sch. 12 Pt. 6 para. 5(a) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 118\(4\)](#)