
STATUTORY INSTRUMENTS

2021 No. 1414

The Norfolk Boreas Offshore Wind Farm Order 2021

PART 2

Principal Powers

Development consent etc. granted by the Order

- 3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—
- (a) development consent for the authorised development; and
 - (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to the requirements and conditions in the deemed marine licences, Work Nos. 1 to 4B must be constructed within the Order limits seaward of MHWS and Work Nos. 4C to 12B must be constructed within the Order limits landward of MHWS.

(3) Unless otherwise stated under Part 3 of Schedule 1, the requirements apply to scenario 1 and scenario 2.

Limits of deviation

4. In the event that the undertaker carries out the overhead line modification as part of Work No.11B the undertaker may—

- (a) deviate vertically from the levels of the existing 400kV overhead line from Walpole to Norwich Main to be modified as part of Work No.11B—
 - (i) to any extent not exceeding 4 metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.
- (b) deviate laterally from the lines or situations of the existing 400kV overhead line from Walpole to Norwich Main to be modified as part of Work No.11B
 - (i) to any extent not exceeding 25 metres either side of the existing overhead line as shown by the limits of deviation relating to that work on the works plan.

Power to maintain authorised project

5.—(1) The undertaker may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing) for offshore works not covered by the deemed marine licences.

Benefit of the Order

6.—(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to paragraphs (4), (5) and (6), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (3) below) and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (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 (excluding the deemed marine licences referred to in paragraph (3) below) and such related statutory rights as may be so agreed;

except where paragraph (10) applies, in which case no consent of the Secretary of State is required.

(3) Subject to paragraph (5), the undertaker may with the written consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph (2)(a), transfer to the transferee the whole of any of the deemed marine licences and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) where an agreement has been made in accordance with paragraph (2)(b), grant to the lessee, for the duration of the period mentioned in paragraph (2)(b), the whole of any of the deemed marine licences and such related statutory rights as may be so agreed;

except where paragraph (10) applies, in which case no consent of the Secretary of State is required.

(4) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application.

(5) The Secretary of State shall consult the MMO before giving consent to the transfer or grant to another person of the whole of the benefit of the provisions of the deemed marine licences.

(6) The Secretary of State shall consult National Grid before giving consent to the transfer or grant to a person of any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (3) above).

(7) Where an agreement has been made in accordance with paragraph (2) or (3) references in this Order to the undertaker, except in paragraph (8), (9), or (11), include references to the transferee or lessee.

(8) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) or (3) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(9) Where an agreement has been made in accordance with paragraph (2) or (3)—

- (a) the benefit (“the transferred benefit”) includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee.

- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) or (3) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(10) The consent of the Secretary of State is required for the exercise of powers under paragraph (2) or (3) except where—

- (a) the transferee or lessee is a person who holds a licence under section 6 of the 1989 Act; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made,
 - (ii) any such claim has been made and has been compromised or withdrawn,
 - (iii) compensation has been paid in final settlement of any such claim,
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(11) The provisions of article 9 (street works), article 11 (stopping up of streets), article 18 (compulsory acquisition of land), article 20 (compulsory acquisition of rights and the imposition of restrictive covenants), article 26 (temporary use of land for carrying out the authorised project) and article 27 (temporary use of land for maintaining the authorised project) have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and is also—

- (a) in respect of Work Nos. 4C to 12B a person who holds a licence under the Electricity Act 1989; or
- (b) in respect of functions under article 9 (street works) relating to a street, a street authority.

(12) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority.

(13) A notice required under paragraphs (4) and (12) must—

- (a) state—
 - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
 - (ii) subject to paragraph (14), the date on which the transfer will take effect;
 - (iii) the provisions to be transferred or granted; and
 - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (9), will apply to the person exercising the powers transferred or granted; and
 - (v) except where paragraph (10)(a) or 10(b) applies, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) where relevant, be accompanied by—
 - (i) a plan showing the works or areas to which the transfer or grant relates; and
 - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(14) The date specified under paragraph (13)(a)(ii) must not be earlier than the expiry of fourteen days from the date of the receipt of the notice.

(15) The notice given under paragraph (12) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(16) Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the benefit of the provisions of any of the deemed marine licences to another person by the undertaker pursuant to an agreement under this article.

Application and modification of legislative provisions

7.—(1) Regulation 6 of the Hedgerows Regulations 1997(1) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“or

- (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

(2) The provisions of the Neighbourhood Planning Act 2017(2) insofar as they relate to temporary possession of land under articles 26 (temporary use of land for carrying out the authorised project) and 27 (temporary use of land for maintaining the authorised project) of this Order do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project.

(3) The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

- (a) the 2016 Regulations, to the extent that they require a permit for anything that would have required consent made under section 109 of the Water Resources Act 1991 immediately before the repeal of that section;
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 of the Water Resources Act 1991 that require consent or approval for the carrying out of works;
- (c) section 23 of the Land Drainage Act 1991(3) (prohibition of obstructions etc. in watercourses); and
- (d) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991 (powers to make byelaws) that require consent or approval for the carrying out of works.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(4) (summary proceedings by persons aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(5); or
- (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or

(1) SI 1997/1160.

(2) 2017 c. 20.

(3) 1991 c. 59.

(4) 1990 c. 43. Section 82 was amended by section 107 and paragraph 6 of Schedule 17 to the Environment Act 1995 c. 25, section 5 of the Noise and Statutory Nuisance Act 1993 c. 40, and section 103 of the Clean Neighbourhood and Environment Act 2005 c. 16 and section 79 was amended by sections 101 and 102 of the Clean Neighbourhoods and Environment Act 2005 c. 16, and by section 120 and paragraph 89 of Schedule 22 to the Environment Act 2005. There are other amendments which are not relevant to the Order.

(5) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to the Order.

(b) the defendant shows that the nuisance—

- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement 27 (control of noise during operational phase and during maintenance); or
- (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.