
STATUTORY INSTRUMENTS

2021 No. 1414

The Norfolk Boreas Offshore Wind Farm Order 2021

PART 7

Miscellaneous and General

Application of landlord and tenant law

33.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease).

Operational land for purposes of the 1990 Act

34. Development consent granted by this Order is 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 not being operational land).

Felling or lopping of trees and removal of hedgerows

35.—(1) Subject to article 35 (trees subject to tree preservation orders), the undertaker may fell or lop or cut back any roots of any tree or shrub near any part of the authorised project, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised project—

(a) remove any hedgerows within the Order limits and specified in Part 2 of Schedule 14 (Hedgerows) in the event of scenario 1 (scenario 1 - removal of hedgerows) and Part 5 of Schedule 14 (Hedgerows) in the event of scenario 2 (scenario 2 - removal of hedgerows) and those hedgerows that, after assessment, are not classed as important hedgerows specified in Part 4 of Schedule 14 (Hedgerows) (scenario 2 - removal of potentially important hedgerows); and

(b) remove the important hedgerows as are within the Order limits and specified in Part 1 of Schedule 14 (Hedgerows) in the event of scenario 1 (scenario 1 - removal of important hedgerows), and Part 3 of Schedule 14 (Hedgerows) in the event of scenario 2 (scenario 2 - removal of important hedgerows) and those hedgerows that, after assessment, are classed as important hedgerows specified in Part 4 of Schedule 14 (Hedgerows) (scenario 2 - removal of potentially important hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(1).

Trees subject to tree preservation orders

36.—(1) Subject to paragraph (2), the undertaker must not fell or lop or cut back the roots of any tree within or overhanging land within the Order limits which is the subject of a tree preservation order.

(2) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made after 28 February 2017 or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(3) In carrying out any activity authorised by paragraph (2)—

(a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(4) The authority given by paragraph (2) constitutes a deemed consent under the relevant tree preservation order.

(5) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Certification of plans etc

37.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents listed in Schedule 18 (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.

(3) Where a plan or document certified under paragraph (1)—

(a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and

(b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

Arbitration

38.—(1) Subject to article 41 (saving provisions for Trinity House), any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 15 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.

Procedure in relation to certain approvals etc

39.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain, or any other relevant discharging authority, for any agreement or approval required or contemplated by any of the provisions of the Order, such agreement or approval must, if given, be given in writing and may not be unreasonably withheld.

(2) Schedule 16 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements 13, 14, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34 and 35 in Part 3 of Schedule 1 (requirements).

Abatement of works abandoned or decayed

40. Where Work Nos. 1(a) to (f) or Work No. 2 or any part of those works is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and restore or remove Work Nos. 1(a) to (f) or Work No. 2 or any relevant part of those works and, without prejudice to any notice served under section 105(2) of the 2004 Act⁽²⁾, to restore the site of the relevant part(s) of Work Nos. 1(a) to (f) or Work No. 2 to a safe and proper condition within an area and to such an extent as may be specified in the notice.

Saving provisions for Trinity House

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

(2) Section 105(2) was substituted by section 69(3) of the Energy Act 2008 c. 32.

Crown rights

42.—(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 for the compulsory acquisition of an interest in any land which 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) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Service of Notices

43.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (9), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978() (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Protective provisions

44. Schedule 17 (protective provisions) has effect.

Compensation to protect the coherence of the national site network

45. Schedule 19 (compensation to protect the coherence of the national site network) has effect.