
STATUTORY INSTRUMENTS

2014 No. 1599

The East Anglia ONE Offshore Wind Farm Order 2014

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 undertakers 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, Works No. 1 to 3A shall be constructed anywhere within the Order limits seaward of mean high water springs and Works No. 3B to 41 shall be constructed anywhere within the Order limits landward of mean low water.

Power to construct and maintain authorised project

4. The undertakers may, at any time construct and maintain, and maintain from time to time, the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.

Benefit of the Order

5.—(1) Subject to paragraphs (2) and (3), the undertakers 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 (2) below) and such related statutory rights as may be agreed between the undertakers and the transferee;
- (b) grant to another person (“the lessee”) for a period agreed between the undertakers and the lessee any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in (2) below) and such related statutory rights as may be so agreed.

(2) The undertakers may with the written consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph 5(a), transfer to the transferee the whole of the deemed generation assets marine licence and/or the whole of the deemed transmission assets marine licence and such related statutory rights as may be agreed between the undertakers and the transferee; or
- (b) where an agreement has been made in accordance with paragraph 5(b), grant to the lessee the whole of the deemed generation assets marine licence and/or the whole of the deemed transmission assets marine licence and such related statutory rights as may be so agreed.

(3) 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.

(4) Where paragraph (7) applies no consent of the Secretary of State shall be required.

(5) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertakers, except in paragraph (8), shall include references to the transferee or lessee.

(6) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertakers.

(7) Where an agreement has been made in accordance with paragraph (1)—

- (a) the benefit (“the transferred benefit”) shall include 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 shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the undertakers save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertakers which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertakers on behalf of the transferee.

(8) This paragraph applies where—

- (a) the transferee or lessee is a person who holds a licence under the Electricity Act 1989; 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 shall be payable.

(9) The provisions of article 8 (street works), article 10 (temporary stopping up of streets), article 15 (compulsory acquisition of land), article 17 (compulsory acquisition of rights), article 23 (temporary use of land for carrying out the authorised project) and article 24 (temporary use of land for maintaining the authorised project) shall have effect only for the benefit of the named undertakers and a person who is a transferee or lessee and is also—

- (a) in respect of Works No. 3B to 41 a person who holds a licence under the Electricity Act 1989; or
- (b) in respect of functions under article 8 (street works) relating to a street, a street authority.

(10) Where paragraph (8) applies the undertakers shall provide written notification to the Secretary of State prior to transferring and/or granting any benefit under paragraph (1).

Application and modification of legislative provisions

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

- “(k) or for carrying out development which has been authorised by development consent made pursuant to the Planning Act 2008.”

(1) [S.I. 1997/1160](#).

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽²⁾ (summary proceedings by person 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 shall 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 undertakers 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 site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974⁽³⁾; or
 - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertakers 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 24 (control of noise during operational phase); or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertakers for purposes of or in connection with the construction or maintenance of the authorised project.

(2) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(3) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.