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STATUTORY INSTRUMENTS

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**2015 No. 1592**

**The Dogger Bank Teesside A and  
B Offshore Wind Farm Order 2015**

**PART 2**

**Principal powers**

**Development consent granted by Order**

- 3.—(1) Subject to the provisions of this Order and to the Requirements—
- (a) Bizco 2 is granted development consent for Project A and related ancillary works;
  - (b) Bizco 3 is granted development consent for Project B and related ancillary works; and
  - (c) Bizco 2 and Bizco 3 are jointly granted development consent for the shared works,
- to be carried out within the Order limits.
- (2) Schedule 1 (authorised project) has effect.

**Maintenance of authorised project**

- 4.—(1) The undertaker may at any time maintain, and maintain from time to time, the authorised project except to the extent that this Order or any agreement made under this Order provides otherwise.
- (2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing).

**Operation of generating station**

- 5.—(1) The undertaker is authorised to operate the generating stations<sup>(1)</sup> comprised in the authorised development.
- (2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a permit or licence under any other legislation that may be required from time to time to authorise the operation of a generating station.

**Procedure in relation to approvals, etc. under Requirements**

- 6.—(1) Where an application is made to the relevant planning authority or to the relevant planning authority for the port for any consent, agreement or approval required by a Requirement, the following provisions apply in respect of that application as they would if the consent, agreement or approval so required were required by a condition imposed on a grant of planning permission—

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(1) “Generating station” is defined in section 235(1) of the Planning Act 2008.

- (a) sections 78 and 79 of the 1990 Act<sup>(2)</sup> (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations that make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission.

(2) For the purposes of paragraph (1), orders, rules and regulations make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as they make provision in relation to—

- (a) an application for such a consent, agreement or approval;
- (b) the grant or refusal of such an application;
- (c) a failure to give notice of a decision on such an application.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989<sup>(3)</sup>.

(4) Nothing in paragraph (1)(b) affects the application of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

### **Benefit of Order**

7. Subject to article 8, the provisions of this Order have effect solely for the benefit of the undertaker.

### **Consent to transfer benefit of Order**

8.—(1) Subject to the provisions of this article, the undertaker may, with the consent of the Secretary of State (except where paragraph (4) applies, in which case no consent is required),—

- (a) transfer to another person (the “transferee”) any or all of the benefit of the provisions of this Order (including Marine Licences 1 to 4) 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 Marine Licences 1 to 4) and such related statutory rights as may be agreed between the undertaker and the lessee.

(2) The exercise by a person of any benefits or rights conferred in accordance with a transfer or grant under paragraph (1) 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.

(3) Where there is a transfer or grant under paragraph (1), references in this Order to the undertaker, except in paragraph (2), include references to the transferee or lessee.

(4) This paragraph applies where the transferee or lessee is a person who holds a licence under the Electricity Act 1989.

(5) The provisions referred to in paragraph (6) have effect only for the benefit of a transferee or lessee who is also—

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(2) 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 and paragraph 12 of Schedule 4 to the Infrastructure Act 2015 (c.7). Section 79 was amended by section 18 of, and paragraph 19 of Schedule 7 to, the Planning and Compensation Act 1991 (c.34) and by paragraph 4 of Schedule 10 to the Planning Act 2008.

(3) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act (c.27), section 136 and 145 of, and Schedule 23 to, the Energy Act 2004, regulation 5 of S.I. 2011/2704 and article 6 of S.I. 2012/2400.

- (a) in respect of Work Nos. 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7, 7L, 8A, 8B, 8S and 9, a person who holds a licence under the Electricity Act 1989; or
  - (b) in respect of functions under article 14 (street works) relating to a street, a street authority.
- (6) The provisions are—
- (a) article 14;
  - (b) article 15 (temporary stopping up of streets);
  - (c) article 22 (compulsory acquisition of land);
  - (d) article 25 (compulsory acquisition of rights);
  - (e) article 29 (temporary use of land for carrying out authorised project); and
  - (f) article 30 (temporary use of land for maintaining authorised project).
- (7) Despite anything contained in Part 4 of the 2009 Act (marine licensing), but subject to paragraph (2), the undertaker may transfer or grant relevant provisions to another person under paragraph (1) (and section 72(7) and (8) of the 2009 Act do not apply to such a transfer or grant).
- (8) Before seeking the Secretary of State’s consent to a transfer or grant of relevant provisions under paragraph (1), the undertaker must—
- (a) consult the MMO; and
  - (b) provide the MMO with—
    - (i) details of the relevant provisions proposed to be transferred or granted; and
    - (ii) the information that the undertaker proposes to provide under paragraph (10).
- (9) Before consenting to a transfer or grant of relevant provisions under paragraph (1), the Secretary of State must consult the MMO.
- (10) As soon as is reasonably practicable but in any event no later than 7 days after the coming into effect of a transfer or grant of relevant provisions to another person, the transferor or grantor must give written notice to the MMO of—
- (a) the name and contact details of the other person;
  - (b) the date on which the transfer or grant took effect;
  - (c) the relevant provisions transferred or granted;
  - (d) the restrictions, liabilities and obligations that, pursuant to paragraph (2), apply in relation to the exercise by the other person of any benefits or rights conferred by the transfer or grant;
  - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
  - (f) in a case where the Secretary of State’s consent is needed for the transfer or grant, a copy of the consent.
- (11) In this article, “relevant provisions” means any of the provisions set out in Part 1 of any of Marine Licences 1, 2, 3 or 4 together with the corresponding conditions set out in Part 2 of the Licence.

### **Guarantees in respect of payment**

9.—(1) Bizco 2 must not exercise a power conferred by Part 5 (powers of acquisition) unless guarantees or alternative forms of security in respect of the liability of the undertaker to pay compensation under that Part are in place.

(2) Bizco 3 must not exercise a power conferred by Part 5 unless guarantees or alternative forms of security in respect of the liability of the undertaker to pay compensation under that Part are in place.

(3) The form of guarantee or security referred to in paragraphs (1) and (2), and the amount guaranteed or secured, must be approved by the relevant planning authority; but such approval must not be unreasonably withheld.

(4) The undertaker must provide the relevant planning authority with such information as the relevant planning authority may reasonably require relating to the interests in the land affected by the exercise of the powers conferred by Part 5 for the relevant planning authority to be able to determine the adequacy of the proposed guarantee or security including—

- (a) the interests affected; and
- (b) the undertaker’s assessment, and the basis of the assessment, of the level of compensation.

(5) A guarantee or other security given in accordance with this article that guarantees or secures the undertaker’s payment of compensation under Part 5 is enforceable against the guarantor or provider of security by any person to whom such compensation is properly payable.

### **Bizco 2 and Bizco 3 may enter on certain land for purposes of construction**

**10.**—(1) For the purpose of constructing Work Nos. 2A, 3A, 4A, 5A, 6A and 8A, Bizco 2 may enter on the land shown on the works plans within the Order limits for Work Nos. 2B, 3B, 4B, 5B, 6B and 8B that has been acquired for the purpose of Project B.

(2) For the purpose of constructing Work Nos. 2B, 3B, 4B, 5B, 6B and 8B, Bizco 3 may enter on the land shown on the works plans within the Order limits for Work Nos. 2A, 3A, 4A, 5A, 6A and 8A that has been acquired for the purpose of Project A.

(3) For the purpose of constructing Work Nos. 2T, 7, 7L, 8S, 9, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 10H, 10I, 10J and 10K, Bizco 2 (in common with Bizco 3), and Bizco 3 (in common with Bizco 2), may enter on the land required for those works.

### **Disapplication and modification of legislative provisions**

**11.**—(1) 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 provisions of any byelaws made under, or having effect as if made under, paragraph 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991(4) (byelaw-making powers of the Appropriate Agency) that require consent or approval for the carrying out of the works;
- (b) the provisions of any byelaws made under, or having effect as if made under, section 66 of the Land Drainage Act 1991(5) (powers to make byelaws) that require consent or approval for the carrying out of the works.

(2) For the purpose of carrying out development authorised by this Order only, regulation 6(1) of the Hedgerows Regulations 1997(6) (permitted work) is deemed to be amended by inserting the following sub-paragraph after sub-paragraph (e)—

- “(ea) for carrying out development for which development consent is conferred under an order pursuant to section 114 of the Planning Act 2008;”.

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(4) 1991 c.57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c.16), section 84(2) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009, paragraph 49 of Schedule 2 to the Flood and Water Management Act 2010 (c.29) and paragraph 315 of Schedule 2 to S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c.25) and section 224 of, and paragraph 24 of Schedule 16 and Part 5 of Schedule 22 to, the Marine and Coastal Access Act 2009. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(5) 1991 c.59. Section 66 was amended by paragraph 38 of Schedule 2 to the Flood and Water Management Act 2010 and by section 86(3) of the Water Act 2014 (c.21).

(6) S.I. 1997/1160. Regulation 6 was amended by paragraph 35 of Schedule 1 to S.I. 2015/377.

### **Offshore works: abandonment, decay or removal**

**12.**—(1) Where the offshore works or any part of them are 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—

- (a) to repair and restore or remove the offshore works or any part of them; and
- (b) to restore the site of the offshore works or any part of it to a safe and appropriate condition, having regard to any requirement that appears to the Secretary of State to be relevant, within an area and to such an extent as may be specified in the notice.

(2) Where the offshore works or any part of them are removed (other than in accordance with paragraph (1)), the Secretary of State may, following consultation with the undertaker and the relevant statutory nature conservation body, issue a written notice requiring the undertaker at its own expense to restore the site of the offshore works or any part of it to a safe and appropriate condition, having regard to any requirement that appears to the Secretary of State to be relevant, within an area and to such an extent as may be specified in the notice.

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

### **Defence to proceedings in respect of statutory nuisance**

**13.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(7) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) 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 the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and 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(8);
- (b) is a consequence of the construction or maintenance of the authorised project and cannot reasonably be avoided;
- (c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and is attributable to the use of the authorised project being used in compliance with Requirement 30 (control of noise during operational phase); or
- (d) is a consequence of the use of the authorised project and cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (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) 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 undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

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(7) 1990 c.43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995. Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c.40) and paragraph 6 of Schedule 17 to the Environment Act 1995.

(8) 1974 c.40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c.55), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995. Section 65 was amended by paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

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**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(3) This article does not affect the application to the authorised development of section 158 of the 2008 Act (nuisance: statutory authority) or any rule of common law having similar effect.