
STATUTORY INSTRUMENTS

2015 No. 318

**The Dogger Bank Creyke Beck
Offshore Wind Farm Order 2015**

PART 2

Principal powers

Development consent, etc. granted by Order

- 3.—**(1) Subject to the provisions of this Order and to the Requirements, Bizco 1 is granted—
- (a) development consent for the Project A offshore works, the Project A onshore works, any other authorised development associated with those works; and
 - (b) consent for related ancillary works,
- to be carried out within the Order limits.
- (2) Subject to the provisions of this Order and to the Requirements, Bizco 4 is granted—
- (a) development consent for the Project B offshore works, the Project B onshore works, any other authorised development associated with those works; and
 - (b) consent for related ancillary works,
- to be carried out within the Order limits.
- (3) Subject to the provisions of this Order and to the Requirements, Bizco 1 and Bizco 4 are jointly granted—
- (a) development consent for the shared works and any other authorised development associated with those works; and
 - (b) consent for related ancillary works,
- to be carried out within the Order limits.
- (4) Despite anything in this Order or shown on the offshore works plans, the undertaker may construct either Work No. 2BA or Work No. 2BC but not both.
- (5) 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) 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).

Operation of generating stations

5.—(1) The undertaker is authorised to operate the generating stations⁽¹⁾ comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirements 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.

Requirements: appeals, etc.

6.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by Requirements 11 to 33, the following provisions apply in respect of that application as they would if the consent, agreement or approval so required was required by a condition imposed on a grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act⁽²⁾ (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, insofar as the orders, rules or regulations are not inconsistent with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and any orders, rules or other regulations made under the 2008 Act.

(2) 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⁽³⁾.

Benefit of Order

7. Subject to article 8 (consent to transfer benefit of Order), 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 such consent is required),—

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

(2) Where an agreement is made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any 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.

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

(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 2000 (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.

- (4) 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 on land under this Order have elapsed and either no such claim has been made or, if such a claim has been made,—
 - (i) the claim has been compromised or withdrawn;
 - (ii) compensation has been paid in final settlement of the claim;
 - (iii) payment of compensation into court has taken place in lieu of settlement of the claim; or
 - (iv) a tribunal or court of competent jurisdiction has determined that no compensation is payable in respect of the claim.
- (5) The provisions of articles 13 (street works), 14 (temporary stopping up of streets), 21 (compulsory acquisition of land), 24 (compulsory acquisition of rights), 29 (temporary use of land for carrying out the authorised project) and 30 (temporary use of land for maintaining authorised project) have effect for the benefit only of a transferee or lessee who is also—
- (a) in respect of Works No. 1A, 1B, 2A, 2BA, 2BC, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7, 8A, 8B, 9A, 9B, 10A, 10B, 10C, 10D, 10E and 10F, a person who holds a licence under the Electricity Act 1989; and
 - (b) in respect of functions under article 13 (street works) relating to a street, a street authority.
- (6) Despite anything contained in Part 4 of the 2009 Act (marine licensing) (but subject to paragraph (3)), the undertaker may, pursuant to an agreement under paragraph (1), transfer relevant provisions to another person.
- (7) The Secretary of State must consult the MMO before consenting to the transfer of relevant provisions pursuant to an agreement under paragraph (1).
- (8) The undertaker must consult the MMO before the transfer of relevant provisions pursuant to an agreement under paragraph (1) in a case where the Secretary of State's consent to such a transfer is not required (because paragraph (4) applies).
- (9) No later than 14 days after the taking effect of any agreement under paragraph (1) that transfers relevant provisions to another person, the transferor must give written notice to the MMO of—
- (a) the name and address of the other person;
 - (b) the relevant provisions transferred; and
 - (c) the date on which the transfer took effect.
- (10) Section 72(7) and (8) of the 2009 Act do not apply to a transfer of relevant provisions pursuant to an agreement under paragraph (1).
- (11) In this article, “relevant provisions” means any of the provisions set out in Part A of any of Marine Licences 1, 2, 3 or 4 together with the corresponding conditions set out in Part B of the Licence.

Bizco 1 and Bizco 4 may enter certain land for purpose of construction

9.—(1) For the purpose of constructing Works No. 2A, 3A, 4A, 5A, 6A, 8A and 9A, Bizco 1 may enter the land shown on the works plans within the Order limits for Works No. 2B, 2BA or 2BC, 3B, 4B, 5B, 6B, 8B and 9B that has been acquired for the purpose of Project B.

(2) For the purpose of constructing Works No. 2B, 2BA or 2BC, 3B, 4B, 5B, 6B, 8B and 9B, Bizco 4 may enter the land shown on the works plans within the Order limits for Works No. 2A, 3A, 4A, 5A, 6A, 8A and 9A that has been acquired for the purpose of Project A.

(3) For the purpose of constructing Works No. 7, 10A, 10B, 10C, 10D, 10E and 10F, Bizco 1 (in common with Bizco 4), and Bizco 4 (in common with Bizco 1), may enter the land required for those works.

Disapplication and modification of legislative provisions

10.—(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) section 109 of the Water Resources Act 1991⁽⁴⁾ (structures in, over or under a main river); and
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25⁽⁵⁾ (byelaw-making powers of the Appropriate Agency) to the Water Resources Act 1991 that require consent or approval for the carrying out of the works.

(2) Any provision of the 1836 Act and of any byelaws, rules, orders or regulations made under that Act are unenforceable and do not have effect in relation to the exercise of any power conferred by this Order so far as applying to Figham Common to the extent that the provision is inconsistent with the exercise of the power including, in particular,—

- (a) if the provision makes it an offence to take action, or not to take action, pursuant to the power;
- (b) if the provision requires the consent of any person before action may be taken pursuant to the power;
- (c) if action taken pursuant to the power causes the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (d) if action taken pursuant to a power or duty under the provision would or might interfere with the exercise of any work authorised by this Order.

(3) In paragraph (2), “1836 Act” means the Act⁽⁶⁾ the title of which is “An Act to provide for the better regulation of certain common pastures within the Borough of Beverley in the East Riding of the County of York”.

(4) In constructing Works No. 6A and 6B, the undertaker may do either or both of the following—

- (a) hold, use and appropriate such parts of the disused canal as it may require for the purposes of the authorised project;
- (b) take down and remove such parts of the disused canal as the undertaker does not require for those purposes.

(5) On the date of entry by the undertaker onto any part of the disused canal for the purposes of exercising any power in Part 5, all of the powers and duties that may be conferred or imposed by the relevant provisions in relation to that part of the disused canal that is within the Order limits cease to have effect.

(6) Except as provided in paragraph (5), the 1801 and 1847 Acts remain in full force and effect.

(4) [1991 c.57](#). Section 109 was amended by section 82(2) of the Marine and Coastal Access Act 2009 and paragraph 274 of Schedule 2 to [S.I. 2013/755](#).

(5) 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.

(6) [1836 c. lxx](#).

(7) In paragraphs (4) to (6)—

“1801 Act” means the Act⁽⁷⁾ the title of which is “An Act for enabling Charlotta Bethell, widow, to make and maintain a navigable canal from the River Hull at a point in the parish of Leven near the boundary between Eske and Leven Carrs in the East Riding of the County of York to Leven Bridge in the said Riding”;

“1847 Act” means the York and North Midland Railway (Canals Purchase) Act 1847⁽⁸⁾;

“disused canal” means that part of the former Leven Canal authorised by the relevant provisions;

“relevant provisions” means sections 1 and 14 of the 1801 Act and section 35 of the 1847 Act.

(8) For the purposes of carrying out development authorised by this Order only, regulation 6(1) of the Hedgerow Regulations 1997⁽⁹⁾ is deemed to be amended by the inserting the following sub-paragraph after sub-paragraph (e)—

“(ea) for carrying out development for which development consent is granted under section 114 of the Planning Act 2008;”.

Offshore works: abandonment, decay or removal

11.—(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 relevant part of it; and
- (b) to restore the site of the offshore works or any relevant part 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 relevant part 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

12.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁰⁾ (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

(7) 41 G.3 c.xxxii, amended by 45 G.3 c.xliii.

(8) 10 & 11 Vict. c.216.

(9) S.I. 1997/1160.

(10) 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.

on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974⁽¹¹⁾;

- (b) is a consequence of the construction or maintenance of the authorised project and that it 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 in compliance with Requirement 25 (control of noise during operational phase); or
- (d) 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 undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

(3) This article does not affect the application to the authorised project of section 158 of the 2008 Act (nuisance: statutory authority).

(11) 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.