
STATUTORY INSTRUMENTS

2016 No. 772

The York Potash Harbour Facilities Order 2016

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) The undertaker is granted development consent for the authorised development, to be carried out and used subject to the provisions of this Order within the Order limits and subject to the requirements and protective provisions.

(2) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits under planning permission granted under the 1990 Act.

(3) Nothing in requirements 2, 3, 5, 6(1)(a) to (c) and (e) to (l) and 7 to 9 prevents the carrying out of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements, immediately upon the Order coming into force.

(4) Nothing in paragraphs 7, 10 to 12, 17, 18, 34, 40, 44, 49 and 51 of Schedule 5 (deemed licence under the 2009 Act) prevents the carrying out of pre-construction surveys and monitoring in relation to any licensed activities immediately upon the Order coming into force.

Parameters of authorised development

4.—(1) The authorised development must be carried out in accordance with the parameters shown on the parameters table and in carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development to the extent of the limits of deviation;
- (b) in respect of Works No. 4, deviate vertically to the extent shown on the vertical deviation plan; and
- (c) in respect of any boundary between the areas of two works numbers, deviate laterally by 20 metres either side of the boundary as noted on the works plans with the exception of the boundary between Works No. 1 and Works No. 2, any boundary with Works No. 3 and any boundary with Works No. 4.

(2) Schedule 6 (quay limits) has effect for the purposes of defining the quay limits for the purposes of Schedule 1 (authorised development) and Schedule 5 (deemed licence under the 2009 Act).

Maintenance of authorised development

5. Subject to the requirements and the protective provisions the undertaker may maintain the authorised development.

Provision of works

6.—(1) The undertaker may from time to time within the Order limits provide and operate the authorised development, and for these purposes the undertaker may construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without limitation on the scope of paragraph (1) the undertaker may within the Order limits carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including—

- (a) works for the accommodation or convenience of vessels (including but not limited to berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);
 - (b) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
 - (c) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.
- (3) Nothing in this article authorises—
- (a) any works that would give rise to any significant environmental effects not assessed in the environmental statement; and
 - (b) the construction of railway lines, buildings, sheds, offices, workshops, depots, electrical substation, container handling equipment or weighbridges within the pipeline corridor or within the lagoon.

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 Order 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 (including the DML) and such related 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 the DML) and such related rights as may be so agreed.
- (2) The powers conferred by paragraph (1)(a) may only be exercised by the undertaker or a transferee.
- (3) A lessee (‘the granting lessee’) may not make a grant under paragraph (1)(b)—
- (a) for a longer period than the period of the grant to the granting lessee; or
 - (b) conferring any benefit or right that is not conferred by the grant to the granting lessee.

(4) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraphs (2) and (5), include references to the transferee or the lessee.

(5) 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.

(6) Despite anything contained in Part 4 (marine licensing) of the 2009 Act, but subject to paragraph (5), the undertaker may transfer or grant relevant provisions to another person under paragraph (1).

(7) 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 (9).

(8) Before consenting to a transfer or grant of relevant provisions under paragraph (1), the Secretary of State must consult the MMO.

(9) 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, under 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.

(10) Section 72(7) and (8) (variation, suspension, revocation and transfer) of the 2009 Act does not apply to a transfer or grant of relevant provisions under paragraph (1).

(11) In this article "relevant provisions" means any of the provisions set out in the DML.

Application and modification of legislative provisions

9.—(1) Where an application is made to the local planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 (right of appeal in relation to planning decisions) and 79 (determination of appeals) of the 1990 Act(1); and

(1) Section 78 was amended by section 17(2) of the Planning and Compensation Act 1991 (c. 34); section 43(2) of the Planning and Compulsory Act 2004 (c. 5); paragraphs 1 and 3 of Schedule 10, and paragraphs 1 and 2 of Schedule 11, to the Planning Act 2008 (c. 29); section 123(1) and (3) of, and paragraphs 1 and 11 of Schedule 12 to, the Localism Act 2011 (c. 20); and paragraphs 1 and 8 of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27). Section 79 was amended by section 18 of, and paragraph 19 of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34); and paragraphs 1 and 4 of Schedule 10 to the Planning Act 2008 (c. 29).

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates 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 it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(3) Paragraphs (1) and (2) only apply in so far as those provisions are not inconsistent with the 2009 EIA Regulations and any orders, rules or regulations made under the 2008 Act.

(4) Article 3 of, and Class B of Part 8 of Schedule 2 to, the Town and Country Planning (General Permitted Development) (England) Order 2015⁽²⁾ apply as if this Order were a grant of planning permission and the undertaker were a statutory undertaker in respect of the authorised development.

(2) [S.I. 2015/596](#).