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STATUTORY INSTRUMENTS

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**2016 No. 772**

**The York Potash Harbour Facilities Order 2016**

**PART 6**

**MISCELLANEOUS AND GENERAL**

**Deemed marine licence**

**31.** The undertaker is deemed to be granted a licence under Part 4 (marine licences) of the 2009 Act to carry out the works described in Schedule 5 (deemed licence under the Marine and Coastal Access Act 2009), subject to the provisions set out in that Schedule, which are to be treated as licence conditions and are deemed to have been attached to the DML by the Secretary of State under Part 4 of the 2009 Act.

**Operational land for purposes of the 1990 Act**

**32.** Development consent granted by this Order within the Order limits is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

**Defences to proceedings**

**33.—(1)** Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(1)</sup> (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 is to 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 undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development 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), of the Control of Pollution Act 1974<sup>(2)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—

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(1) 1990 c. 43.

(2) 1974 c. 40. Section 65 was amended by section 132(2) of, and Schedule 7 to, the Building Act 1984 (c. 55) and section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to section 65 which are not relevant to this Order.

- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development and that it cannot reasonably be avoided; or
- (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) In proceedings for an offence under any of the provisions mentioned in paragraph (3) it is a defence for the undertaker to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) The provisions referred to in paragraph (2) are—

- (a) article 19 (lights on tidal works etc. during construction);
- (b) article 20 (provision against danger to navigation); and
- (c) article 21 (permanent lights on tidal works).

(4) If in any case the reliance on the defence provided by paragraph (2) involves the allegation that the commission of the offence was due to the act or default of another person, the undertaker is not, without leave of the court, entitled to rely on that defence unless, before the period of 7 clear days preceding the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

(5) 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 does 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 development.

### **Protection of interests**

34. Schedules 7 to 11 have effect.

### **Saving for Trinity House**

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

### **Crown Rights**

36.—(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—

- (a) to take, use, enter upon 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)—
  - (i) 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;
  - (ii) 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
  - (iii) 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; or

(b) to exercise any right under this Order compulsorily to acquire 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 without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) 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.

#### **Approvals pursuant to requirements etc.**

**37.**—(1) Where requirements, provisions of the DML (including the licence conditions) or protective provisions require approval from or agreement with the local planning authority or other person, such approval or agreement must be in writing and must not provide for development outside the parameters of the authorised development or for a form of development which would give rise to materially new or materially worse environmental effects in comparison with those assessed in the environmental statement or any updated environmental information supplied under the 2009 EIA Regulations.

(2) When any details, plans or other matters have been agreed or approved by the local planning authority or other person in accordance with a requirement, the DML (including the licence conditions) or the protective provisions, those details, plans or other matters may subsequently be amended by agreement with the person concerned provided that no amendments to those details, plans or other matters would provide for development outside the parameters of the authorised development or for a form of development which would give rise to materially new or materially worse environmental effects in comparison with those assessed in the environmental statement or any updated environmental information supplied under the 2009 EIA Regulations.

#### **Certification of plans etc.**

**38.**—(1) The undertaker, as soon as practicable after the making of this Order, must submit to the Secretary of State copies of—

- (a) the book of reference (Document 5.3B);
- (b) the land plans (Documents 2.1, 2.1A to 2.1B(i), 2.1C to 2.1J(i) and 2.1K to 2.1N(i));
- (c) the environmental statement (Documents 6.4 and 6.5);
- (d) the works plans (Documents 2.2A to F);
- (e) the vertical deviation plan (Document 3.11B);
- (f) the parameters table (Document 6.9A);
- (g) the highway works plan (Document 3.14);
- (h) the mitigation and monitoring strategy (Document 6.12A);
- (i) the conveyor route plans (Documents 3.3H to O);
- (j) the governance tracker (Document 6.8B);
- (k) the outline construction environmental management plan (Document 6.10A);
- (l) the outline ecological management plan (Document 6.11B);
- (m) the constructability notes;
- (n) the pipeline corridor plans (Documents 3.15A to C);
- (o) drawing number PB1586 – SK123 Revision 2 (Document 3.9B) showing the “river frontage line”;
- (p) drawing number PB1586 – SK1081 Revision D (Document 3.16) showing the access arrangements for the Redcar Bulk Terminal conveyor;

- (q) drawing numbers PB1586-SK1026 Revision E (Document 3.5A) and PB1586-SK1027 Revision G (Documents 3.5B) showing locations of screen fencing; and
- (r) the Wilton Complex Plan (drawing number T-MIS-0065-01),

for certification that they are true copies of the documents referred to in this Order.

(2) Where the amendment of any plan or document referred to in paragraph (1) is required to reflect the terms of the Secretary of State's decision to make this Order, that plan or document, in the form amended to the Secretary of State's satisfaction, is the version of the plan or document to be certified under paragraph (1).

(3) 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.

### Service of Notices

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

- (a) by post; and
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) 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 (references to service by post) of the Interpretation Act 1978(3) 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 any 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 that 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 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) the notice or document is 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 7 days of receipt that the recipient requires a paper copy of all or 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 electronic communication given 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 by 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 may not be less than 7 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.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **Arbitration**

**40.** Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.