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## STATUTORY INSTRUMENTS

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# 2016 No. 844

## The Hornsea Two Offshore Wind Farm Order 2016

### PART 1

#### Preliminary

#### Citation and commencement

- 1.—(1) This Order may be cited as the Hornsea Two Offshore Wind Farm Order 2016.
- (2) This Order comes into force on 7th September 2016.

#### Commencement Information

- II** Art. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

#### Interpretation

- 2.—(1) In this Order—
  - “1961 Act” means the Land Compensation Act 1961(1);
  - “1965 Act” means the Compulsory Purchase Act 1965(2);
  - “1980 Act” means the Highways Act 1980(3);
  - “1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);
  - “1989 Act” means the Electricity Act 1989(5);
  - “1990 Act” means the Town and Country Planning Act 1990(6);
  - “1991 Act” means the New Roads and Street Works Act 1991(7);
  - “2003 Act” means the Communications Act 2003(8);
  - “2004 Act” means the Energy Act 2004(9);
  - “2008 Act” means the Planning Act 2008;
  - “2009 Act” means the Marine and Coastal Access Act 2009(10);

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(1) 1961 c.33.  
(2) 1965 c.56.  
(3) 1980 c.66.  
(4) 1981 c.66.  
(5) 1989 c.29.  
(6) 1990 c.8.  
(7) 1991 c.22.  
(8) 2003 c.21.  
(9) 2004 c.20.  
(10) 2009 c.23.

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (authorised project) and any other works authorised by this Order that are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development described in Part 1 of Schedule 1 and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development and the ancillary works;

“book of reference” means the document certified as the book of reference by the Secretary of State under article 40 (certification of plans, etc.);

“Breesea” means Breesea Limited<sup>(11)</sup> (company number 07883217);

“commence” means commence any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions and remedial work in respect of any contamination or other adverse ground conditions; and “commencement” must be construed accordingly;

“compensation compound” means a construction working site forming part of the associated development and shown coloured green on the compensation compounds plan, the purpose of which is to compensate the Hornsea Project One undertaker in the event that the use by the Hornsea Project One undertaker of the Hornsea Project One construction compounds is restricted or prevented by the undertaker carrying out authorised project;

“compensation compound access” means an access forming part of the associated development and shown coloured pink on the compensation compounds plan, the purpose of which is to access a compensation compound;

“compensation compounds plan” means the plans certified as the compensation compounds plan by the Secretary of State under article 40;

“connection works” means Work Nos. 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B, 9A, 9B and 10 and any related associated development;

“deemed marine licence” means a marine licence set out in Schedule 8, 9, 10 or 11;

“EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009;

“electrical circuit” means a number of electrical conductors necessary to transmit electricity between 2 points within the authorised development comprising—

- (a) in the case of HVAC transmission, 3 conductors which may be bundled as 1 cable or (onshore) take the form of 3 separate cables; and
- (b) in the case of HVDC transmission, 2 conductors which may be attached together or take the form of single cables,

and the electrical circuit may include 1 or more auxiliary cables (normally fibre-optic cables) for the purpose of control, monitoring, protection or general communications;

“electrical transmission station” means an onshore HVDC converter substation or HVAC substation required for connecting the electrical circuits to the National Grid;

“environmental statement” means the document certified as the environmental statement by the Secretary of State under article 40;

“gravity base foundation” means—

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<sup>(11)</sup> The registered office of Breesea Limited is 5 Howick Place, London SW1P 1WG.

- (a) a structure principally of concrete or steel (or both) that rests on the seabed due to its own weight and that of added ballast or to the weight of water above it and may include associated equipment including suction piles, J-tubes and access platforms; or
- (b) a structure principally of concrete or steel (or both) consisting of a platform supported on 2 pontoons to which the platform is connected by columns which may be connected by braces;

“highway” and “highway authority” have the same meaning as in the 1980 Act<sup>(12)</sup>;

“Hornsea Project One construction compounds” means the working sites to be used in connection with the construction of the works authorised by the Hornsea One Offshore Wind Farm Order 2014<sup>(13)</sup> and forming part of the associated development authorised by that Order;

“Hornsea Project One undertaker” means Heron Wind Limited<sup>(14)</sup> (company number 07640868) or any other person who has the benefit of the Hornsea One Offshore Wind Farm Order 2014 in respect of the works or operations authorised by that Order that are landward of MHWS;

“HVAC” means high voltage alternating current;

“HVDC” means high voltage direct current;

“in-principle monitoring plan” means the document certified as the in-principle monitoring plan by the Secretary of State under article 40;

“intra-array electrical circuits” means the electrical circuits referred to in paragraph (b) of the description of Work No. 1A and in paragraph (b) of the description of Work No. 1B;

“intertidal area” means the area between MHWS and MLWS;

“jacket foundation” means a lattice construction comprising tubular members and joints fixed to the seabed with piles (either driven/drilled piles or suction piles) which will include platforms and J-tubes and may include braced monopiles and a transition piece;

“land plans” means the plans certified as the land plans by the Secretary of State under article 40;

“LAT” means lowest astronomical tide;

“limits of deviation” means the limits of deviation for the Works shown on the works plans;

“local planning authority” means, in relation to any land or part of the authorised development, the district council or unitary authority for the area in which the land or part of the development is situated;

“main river” has the meaning given by the Water Resources Act 1991<sup>(15)</sup>;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace any of the authorised development; and any derivative of “maintain” must be construed accordingly;

“marine export cable area” means the area described as such whose co-ordinates are set out in Part 1 of Schedule 1 and listed in the offshore works plans;

“MCA” means the Maritime and Coastguard Agency;

“MHWS” (mean high water springs) means the highest level which spring tides reach on average over a period of time;

“MLWS” (mean low water springs) means the lowest level which spring tides reach on average over a period of time;

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<sup>(12)</sup> “Highway” is defined in section 328(1). For “highway authority”, see section 1.

<sup>(13)</sup> S.I. 2014/3331, amended by S.I. 2015/1280 and 2016/471.

<sup>(14)</sup> The registered office of Heron Wind Limited is 5 Howick Place, London SW1P 1WG.

<sup>(15)</sup> 1991 c.57. “Main river” is defined in section 113(1). The definition was amended by section 59(3) of the Water Act 2014 (c.21).

“MMO” means the Marine Management Organisation;

“mode of transmission” means whichever of the HVAC or HVDC technologies is chosen by the undertaker as the means of transmitting electricity by cable for the purposes of the authorised project;

“monopile foundation” means a foundation comprising a large diameter steel or concrete tube or pile driven vertically into the seabed, J-tubes and platforms and may include external structural devices such as bracing members or steel anchor wires and a transition piece;

“offshore accommodation platform” means a platform housing or incorporating temporary accommodation, landing ports for vessels and helicopters, standby electricity generation equipment, marking and lighting and other equipment facilities to assist in the co-ordination of marine activities related to the authorised development;

“offshore HVAC collector substation” means a structure serving as a collection point for the intra-array electrical circuits and containing equipment for the purpose of transforming the electricity generated at the wind turbine generators to a higher voltage; it may also include a helicopter platform;

“offshore HVDC converter substation” means a structure that contains equipment to convert HVAC electricity to HVDC electricity; it may also include a helicopter platform;

“offshore reactive compensation substation” means a structure housing electrical reactors for the purpose of limiting electrical losses in the course of HVAC transmission by providing reactive compensation; it may also include a helicopter platform;

“offshore works plans” means the part of the works plans described as the offshore works plans;

“onshore works plans” means the part of the works plans described as the onshore works plans;

“Optimus Wind” means Optimus Wind Limited<sup>(16)</sup> (company number 07883284);

“Order land” means the land shown on the land plans that is within the limits of land to be acquired or used and described in the book of reference;

“Order limits” means the limits shown on the works plans within which the authorised project may be carried out;

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State under article 40;

“outline ecological management plan” means the document certified as the outline ecological management plan by the Secretary of State under article 40;

“outline employment and skills plan” means the document certified as the outline employment and skills plan by the Secretary of State under article 40;

“outline landscape scheme and management plan” means the document certified as the outline landscape scheme and management plan by the Secretary of State under article 40;

“Project A works” means Work Nos. 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A and 9A;

“Project B works” means Work Nos. 1B, 2B, 3B, 4B, 5B, 6B, 7B, 8B and 9B;

“Requirements” means a Requirement set out in Part 3 of Schedule 1; and a reference to a numbered Requirement is a reference to the Requirement set out in the paragraph of that Part with the same number;

“shared works” means Work No. 10;

“street” means a street within the meaning of section 48 of the 1991 Act<sup>(17)</sup> together with land on the verge of a street or between 2 carriageways and includes part of a street;

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<sup>(16)</sup> The registered office of Optimus Wind Limited is 5 Howick Place, London SW1P 1WG.

<sup>(17)</sup> Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26).

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act<sup>(18)</sup>;

“suction pile” means a large diameter steel cylinder that is fixed to the base of a foundation, partially penetrates the seabed and remains in place using its weight and hydrostatic pressure differential;

“trenchless technique” means a method of installation that allows ducts and cables to be installed under an obstruction without breaking open the ground and digging a trench (examples of such techniques include horizontal directional drilling, thrust boring, auger boring and pipe ramming);

“tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means, subject to article 35(8) (transfer of benefit of Order),—

- (a) for the purposes of constructing, maintaining and operating the Project A works and any associated development or ancillary works relating to those works, Optimus Wind;
- (b) for the purposes of constructing, maintaining and operating the Project B works and any associated development or ancillary works relating to those works, Breesea;
- (c) for the purposes of constructing, maintaining and operating the shared works and any associated development or ancillary works relating to those works, Optimus Wind and Breesea; and any restrictions, liabilities and obligations arising in relation to any shared works apply to the undertaker exercising the powers under this Order in relation to the shared works; and
- (d) in any other case, Optimus Wind and Breesea;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water that is at the time in, on or over water;

“watercourse” includes any river, stream, ditch, drain, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer;

“wind farm area” means the area described as such whose co-ordinates are set out in Part 1 of Schedule 1;

“wind turbine generator” means a structure comprising any or all of a tower, rotor, blades, nacelle and ancillary electrical and other equipment or structures, which may include lighting and a helicopter platform, fixed to a foundation;

“Work” means a Work, or part of a Work, set out in Part 1 of Schedule 1; and a reference to a Work designated by a number, or a by a combination of a number and a letter (for example, “Work No. 1A”), is a reference to the Work so designated in that Part;

“works plans” means the plans certified as the works plans by the Secretary of State under article 40 comprising the offshore works plans, the intertidal works plans and the onshore works plans.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate, except for the parameters referred to in Requirements 2 and 4 and Conditions 1 and 2 in Part 2 of each of the deemed marine licences; and distances between parts of a Work must be measured along that Work.

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<sup>(18)</sup> “Street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c.7).

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Hornsea Two Offshore Wind Farm Order 2016*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

(4) References in this Order to points identified by letters, with or without numbers, must be construed as references to points so lettered on the works plans.

(5) In this Order—

- (a) all offshore co-ordinates are latitude and longitude degrees, minutes and seconds to 3 decimal places in WGS84 Datum; and
- (b) all onshore co-ordinates are Eastings and Northings in OSGB36 Datum, British National Grid Projection.

#### Commencement Information

**I2** Art. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

#### Disapplication of legislative provisions

**3.—(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 Environmental Permitting (England and Wales) Regulations 2010(**19**), to the extent that they require a permit for anything that would have required consent under section 109 of the Water Resources Act 1991 immediately before the repeal of that section;
  - (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991(**20**) (byelaw-making powers of the Appropriate Agency) that require consent or approval for the carrying out of the works;
  - (c) section 23 of the Land Drainage Act 1991(**21**) (prohibition of obstructions, etc. in watercourses);
  - (d) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991 (powers to make byelaws) that require consent or approval for the carrying out of the works.
- (2) The following do not apply to the authorised project—
- (a) section 25 of the River Humber Conservancy Act 1852(**22**) (penalties for improper deposit of hard materials in the river);
  - (b) section 9(ii) of the Humber Conservancy Act 1899(**23**) (licences for execution of works);
  - (c) section 6(2) of the Humber Conservancy Act 1905(**24**) (no erections in Humber below river lines or without licence above river lines).

#### Commencement Information

**I3** Art. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

(19) [S.I. 2010/675](#). See amendments made by [S.I. 2016/475](#).

(20) 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.

(21) [1991 c.59](#). Section 23 was amended by paragraph 192 of Schedule 22 to the Environment Act 1995, paragraph 32 of Schedule 2 to the Flood and Water Management Act 2010 and [S.I. 2013/755](#). 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.

(22) 15 and 16 Vict. c. cxxx.

(23) 62 and 63 Vict. c. cci.

(24) 5 Edw. 7 c. clxxix.

## Guarantees in respect of payment of compensation

4.—(1) The undertaker must not begin to exercise the powers in articles 18 to 28 in relation to any land unless it has first put in place—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose,

that has been approved by the Secretary of State.

(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is enforceable against the guarantor or person giving the alternative form of security by any person to whom the compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(3) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 20 years after the date on which the relevant power is exercised.

### Commencement Information

**I4** Art. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

## Defence to proceedings in respect of statutory nuisance

5.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(25)</sup> (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), of the Control of Pollution Act 1974<sup>(26)</sup>;
- (b) is a consequence of the construction or maintenance of the authorised project and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised project and 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 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 project.

### Commencement Information

**I5** Art. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

<sup>(25)</sup> 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.

<sup>(26)</sup> 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.

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 Pt.03 para. 6(l) words substituted by [S.I. 2016/1104 Sch.](#)
- Sch. 12 Pt. 6 para. 5(a) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 118\(4\)](#)