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STATUTORY INSTRUMENTS

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**2020 No. 1656**

**The Hornsea Three Offshore Wind Farm Order 2020**

**PART 2**

**PRINCIPAL POWERS**

**Development consent etc. granted by the Order**

- 3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—
- (a) development consent for the authorised development; and
  - (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to the requirements, Work Nos. 1 to 5 must be constructed within the Order limits seaward of MHWS and Work Nos. 6 to 15 must be constructed within the Order limits landward of MHWS.

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**Commencement Information**

**I1** Art. 3 in force at 22.1.2021, see [art. 1](#)

**Power to maintain the authorised project**

4.—(1) The undertaker may at any time maintain the authorised project, except to the extent that this Order or an 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 any further licence under Part 4 of the 2009 Act (marine licensing) for offshore works not covered by the deemed marine licences.

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**Commencement Information**

**I2** Art. 4 in force at 22.1.2021, see [art. 1](#)

**Benefit of the Order**

5.—(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to paragraph (7), 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 deemed marine licences) and such related statutory rights as may be agreed between the undertaker and the transferee; and

- (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 the Order (including the deemed marine licences) and such related statutory rights as may be so agreed.

except where paragraph (7) applies, in which case no consent of the Secretary of State is required.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraphs (6) and (8), shall include references to the transferee or lessee.

(4) The undertaker shall consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application.

(5) The Secretary of State shall consult the MMO before giving consent to the transfer or grant to another person of the benefit of the provisions of the deemed marine licences.

(6) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (2)—

- (a) the benefit transferred or granted (“the transferred benefit”) shall include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) 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.

(7) The consent of the Secretary of State is required for the exercise of powers under paragraph (2) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 of the 1989 Act; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made,
  - (ii) any such claim has been made and has been compromised or withdrawn,
  - (iii) compensation has been paid in final settlement of any such claim,
  - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim, or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation shall be payable.

(8) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority.

(9) A notice required under paragraphs (4) and (8) must—

- (a) state—
  - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
  - (ii) subject to paragraph (10), the date on which the transfer will take effect;
  - (iii) the provisions to be transferred or granted;
  - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (6)(c), will apply to the person exercising the powers transferred or granted; and

- (v) where paragraph (7) does not apply, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) be accompanied by—
  - (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
  - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.
- (10) The date specified under paragraph (9)(a)(ii) in respect of a notice served in respect of paragraph (8) must not be earlier than the expiry of fourteen days from the date of the receipt of the notice.
- (11) The notice given under paragraph (8) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.
- (12) The provisions of articles 8 (street works), 10 (temporary stopping up of streets), 18 (compulsory acquisition of land), 20 (compulsory acquisition of rights), 26 (temporary use of land for carrying out the authorised project) and 27 (temporary use of land for maintaining the authorised project) shall have effect only for the benefit of the undertaker and a person who is a transferee or lessee who is also—
  - (a) in respect of Work Nos. 6 to 15 a person who holds a licence under the 1989 Act, or
  - (b) in respect of functions under article 8 relating to street, a street authority.

**Commencement Information**

**I3** Art. 5 in force at 22.1.2021, see [art. 1](#)

**Application and modification of legislative provisions**

6.—(1) Regulation 6 of the Hedgerows Regulations 1997 <sup>M1</sup> is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“(k) or for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

(2) The provisions of the Neighbourhood Planning Act 2017 <sup>M2</sup> 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, insofar as they relate to temporary possession of land under articles 26 (temporary use of land for carrying out the authorised project) and 27 (temporary use of land for maintaining the authorised project) of this Order.

**Commencement Information**

**I4** Art. 6 in force at 22.1.2021, see [art. 1](#)

**Marginal Citations**

**M1** [S.I. 1997/1160](#). Relevant amendments to this instrument have been made by section 73(2) of the [Countryside and Rights of Way Act 2000 \(c. 37\)](#) and by [S.I. 2003/2155](#), [S.I. 2006/1177](#), [S.I. 2009/1307](#) and [S.I. 2105/377](#).

**M2** [2017 c.20](#).

## Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>M3</sup> (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order may 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, maintenance or decommissioning of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974<sup>M4</sup>; or
  - (ii) is a consequence of the construction, maintenance or decommissioning of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project in compliance with requirement 21 (control of noise during operational phase); or
  - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (of the Control of Pollution Act 1974<sup>M5</sup> does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction, maintenance or decommissioning of the authorised project.

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### Commencement Information

**I5** Art. 7 in force at 22.1.2021, see [art. 1](#)

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### Marginal Citations

- M3** 1990 c.43. Relevant amendments are as follows: section 82 was amended by section 107 and Schedule 17 paragraph 6 of the [Environment Act 1995 \(c.25\)](#) and section 5(2) of the [Noise and Statutory Nuisance Act 1993 \(c.40\)](#), and section 79 was amended by sections 101 and 102 of the [Clean Neighbourhoods and Environment Act 2005 \(c.16\)](#), by section 2 of the Noise and Statutory Nuisance Act 1993 and by section 120 and Schedule 22 paragraph 89 of the Environment Act 2005.
- M4** 1974 c.40. Sections 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.
- M5** 1974 c.20. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.

**Changes to legislation:**

There are currently no known outstanding effects for the The Hornsea Three Offshore Wind Farm Order 2020, PART 2.