
STATUTORY INSTRUMENTS

2023 No. 778

The Boston Alternative Energy Facility Order 2023

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Boston Alternative Energy Facility Order 2023 and comes into force on 27th July 2023.

Interpretation

2.—(1) In this Order, unless otherwise stated—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

“the 1984 Act” means the Road Traffic Regulation Act 1984(5);

“the 1990 Act” means the Town and Country Planning Act 1990(6);

“the 1991 Act” means the New Roads and Street Works Act 1991(7);

“the 2008 Act” means the Planning Act 2008(8);

“access and rights of way plan” means the plan of that description certified by the Secretary of State as the access and rights of way plan for the purposes of this Order under article 47 (certification of documents, etc.);

“address” includes any number or address used for the purposes of electronic transmission;

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in section 105(1) of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order or any part of it which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1980 c. 66.
(4) 1981 c. 66.
(5) 1984 c. 27.
(6) 1990 c. 8.
(7) 1991 c. 22.
(8) 2008 c. 29.

“book of reference” means the document of that description certified by the Secretary of State as the book of reference for the purposes of this Order under article 47 (certification of documents, etc.);

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“combined heat and power assessment” means the document of that description certified by the Secretary of State as the combined heat and power assessment for the purposes of this Order under article 47 (certification of documents, etc.);

“commence” means the first carrying out of any material operation, as defined in section 155 of the 2008 Act (when development begins), comprised in or carried out for the purposes of the authorised development other than operations consisting of pre-construction ecological mitigation, archaeological investigations, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), receipt and erection of construction plant and equipment, installation of construction compounds, erection of a footbridge, erection of temporary viewing structure, temporary car parking, erection of construction welfare facilities, erection of any temporary means of enclosure, the temporary display of site notices or contractors’ signage and notices and “commencement” and “commenced” are to be construed accordingly;

“commissioning” means the process of assuring that all systems and components of the authorised development or part of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions are to be construed accordingly;

“date of final commissioning” means the date on which the commissioning of Work No. 1A is completed as notified as such by the undertaker to the relevant planning authority pursuant to paragraph 20 of Schedule 2 (requirements);

“deemed marine licence” means the marine licence granted by this Order as set out in Schedule 9;

“design and access statement” means the document of that description certified by the Secretary of State as the design and access statement for the purposes of this Order under article 47 (certification of documents, etc.);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means provided it is in an electronic form;

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003⁽⁹⁾;

“environmental statement” means the document of that description certified by the Secretary of State as the environmental statement for the purposes of this Order under article 47 (certification of documents, etc.) as supplemented by the documents set out in Part 2 of Schedule 10;

“flood risk activity” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016⁽¹⁰⁾;

⁽⁹⁾ 2003 c. 21.

⁽¹⁰⁾ S.I. 2016/1154 as defined in paragraph 3 of Part 1 of Schedule 25.

“flood risk assessment” means the document of that description certified by the Secretary of State as the flood risk assessment for the purposes of this Order under article 47 (certification of documents, etc.);

“footpath” and “footway” have the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“indicative generating station plans” means the plans of that description certified by the Secretary of State as the indicative generating station plans for the purposes of this Order under article 47 (certification of documents, etc.);

“indicative wharf plans” means the plans of that description certified by the Secretary of State as the indicative wharf plans for the purposes of this Order under article 47 (certification of documents, etc.);

“land plan and Crown land plan” means the plans of that description certified by the Secretary of State as the land plan and Crown land plan for the purposes of this Order under article 47 (certification of documents, etc.);

“limits of deviation” means the limits for the scheduled works referred to in article 7 (limits of deviation) shown for each numbered work on the works plans;

“maintain” in relation to the authorised development includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve to the extent that such works do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“MMO” means the Marine Management Organisation;

“Navigation Management Planning Process: Risk to Birds” means the document of that description certified by the Secretary of State as the Navigation Management Planning Process: Risk to Birds for the purposes of this Order under article 47 (certification of documents, etc.);

“navigation management plan template” means the document of that description certified by the Secretary of State as the template navigation management plan for the purposes of this Order under article 47 (certification of documents, etc.);

“navigation risk assessment” means the document of that description certified by the Secretary of State as the navigation risk assessment for the purposes of this Order under article 47 (certification of documents, etc.);

“operational period” means the period from the date of final commissioning to the permanent cessation of the operation of Work No. 1A;

“Order land” means the land shown on the land plan and Crown land plan which is within the limits of land to be acquired or used permanently or temporarily, and described in the book of reference;

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

“OSGR” means Ordinance Survey Grid Reference;

“outline air quality and dust management plan” means the document of that description certified by the Secretary of State as the outline air quality and dust management plan for the purposes of this Order under article 47 (certification of documents, etc.);

“outline air quality deposition monitoring plan” means the document of that description certified by the Secretary of State as the outline air quality deposition monitoring plan for the purposes of this Order under article 47 (certification of documents, etc.);

“outline code of construction practice” means the document of that description certified by the Secretary of State as the outline code of construction practice for the purposes of this Order under article 47 (certification of documents, etc.);

“outline construction traffic management plan” means the document of that description certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order under article 47 (certification of documents, etc.);

“outline landscape and ecological mitigation strategy” means the document of that description certified by the Secretary of State as the outline landscape and ecological mitigation strategy for the purposes of this Order under article 47 (certification of documents, etc.);

“outline lighting strategy” means the document of that description certified by the Secretary of State as the outline lighting strategy for the purposes of this Order under article 47 (certification of documents, etc.);

“outline marine mammal mitigation protocol” means the document of that description certified by the Secretary of State as the outline marine mammal mitigation protocol for the purposes of this Order under article 47 (certification of documents, etc.);

“outline surface and foul water drainage strategy” means the document of that description certified by the Secretary of State as the outline surface and foul water drainage strategy for the purposes of this Order under article 47 (certification of documents, etc.);

“outline written scheme of investigation” means the document of that description certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order under article 47 (certification of documents, etc.);

“owner”, in relation to land, has the same meaning as in section 7(11) (interpretation) of the Acquisition of Land Act 1981;

“register of environmental actions and commitments” means the document of that description certified by the Secretary of State as the register of environmental actions and commitments for the purposes of this Order under article 47 (certification of documents, etc.);

“relevant planning authority” means—

- (a) Lincolnshire County Council for the purposes of article 15 (access to works) and the following requirements in Schedule 2 (requirements) to this Order—
 - (i) requirement 7;
 - (ii) requirement 8;
 - (iii) requirement 9;
 - (iv) requirement 13;
 - (v) requirement 14;
 - (vi) requirement 17;
 - (vii) requirement 18;
 - (viii) requirement 21;
 - (ix) requirement 24; and
 - (x) requirement 25;
- (b) Boston Borough Council for the purposes of the following requirements in Schedule 2 (requirements) to this Order—
 - (i) requirement 3;

(11) 1981 c. 67. Section 7 was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to this section which are not relevant to this Order.

- (ii) requirement 4;
- (iii) requirement 6;
- (iv) requirement 10;
- (v) requirement 11;
- (vi) requirement 12;
- (vii) requirement 15;
- (viii) requirement 16;
- (ix) requirement 19;
- (x) requirement 22; and
- (xi) requirement 23;

“relevant planning authorities” means both Lincolnshire County Council and Boston Borough Council;

“requirements” means those matters set out in Schedule 2 to this Order;

“Roman Bank plan” means the plan titled “Roman Bank within the Order limits” certified by the Secretary of State as the Roman Bank plan for the purposes of this Order under article 47 (certification of documents, etc.);

“statutory nature conservation body” means the appropriate nature conservation body as defined in regulation 5 of the Conservation of Habitats and Species Regulations 2017⁽¹²⁾;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1)⁽¹³⁾ (interpretation of Chapter I) of the Communications Act 2003;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“The Haven” means the part of the River Witham, known as The Haven;

“traffic authority” has the same meaning as in section 121A of the 1984 Act;

“undertaker” means Alternative Use Boston Projects Limited (company number 11013830, whose registered office is at 26 Church Street, Bishop’s Stortford, Hertfordshire, England, CM23 2LY) or any other person who for the time being has the benefit of this Order in accordance with articles 8 and 9 of this Order;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“working days” means Monday to Friday excluding bank holidays and other public holidays; and

“works plans” means the plans of that description certified by the Secretary of State as the works plans for the purposes of this Order under article 47 (certification of documents, etc.).

(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 and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in this Order land.

⁽¹²⁾ S.I. 2017/1012.

⁽¹³⁾ 2003 c. 21.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plans to which the reference applies.

(6) References in this Order to numbered works are references to the works numbered in Schedule 1 (authorised development).

(7) References to “Schedule” are, unless otherwise stated, references to Schedules to this Order.

(8) The expression “includes” is to be construed without limitation.

(9) References to any statutory body in this Order include that body’s successor in respect of functions which are relevant to this Order.

(10) References in this Order to “part of the authorised development” are to be construed as references to stages, phases or elements of the authorised development.