
STATUTORY INSTRUMENTS

2022 No. 433

The East Anglia TWO Offshore Wind Farm Order 2022

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) Each of the scheduled works must be constructed and maintained within the limits of deviation for that work.

Power to maintain 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.

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 (4), 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 and such related statutory rights as may be agreed between the undertaker and the transferee;
- (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 and such related statutory rights as may be so agreed,

except where paragraph (8) applies, in which case no consent of the Secretary of State is required.

(3) Subject to paragraph (4), the undertaker may with the written consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph (2)(a), transfer to the transferee the whole of any of the deemed marine licences and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) where an agreement has been made in accordance with paragraph (2)(b), grant to the lessee, for the duration of the period mentioned in paragraph (2)(b), the whole of any of the deemed marine licences and such related statutory rights as may be so agreed, except where paragraph (8) applies, in which case no consent of the Secretary of state is required.

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

(5) Where an agreement has been made in accordance with paragraph (2) or (3) references in this Order to the undertaker, except in paragraph (6), (7) or (9), include references to the transferee or lessee.

(6) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) are 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) Where an agreement has been made in accordance with paragraph (1) or (3)—

- (a) the benefit (“the transferred benefit”) includes 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 resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee.

(8) This paragraph applies where—

- (a) the transferee or lessee is a person who holds a licence under 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 is payable.

(9) The provisions of article 8 (street works), article 12 (temporary stopping up of streets), article 18 (compulsory acquisition of land), article 20 (compulsory acquisition of rights), article 26 (temporary use of land for carrying out the authorised project) and article 27 (temporary use of land for maintaining the authorised project) have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and is also—

- (a) in respect of Work Nos. 6 to 43 a person who holds a licence under the 1989 Act; or
- (b) in respect of functions under article 8 (street works) relating to a street, a street authority.

(10) Prior to any transfer or grant under this article taking effect the undertaker must provide written notification 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.

(11) A notice required under paragraph (10) 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 (12), 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), will apply to the person exercising the powers transferred or granted; and
 - (v) where paragraph (8) 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.

(12) The date specified under paragraph (11)(a)(ii) must not be earlier than the expiry of 14 days from the date of the receipt of the notice.

(13) The notice given under paragraph (11) 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.

(14) Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the benefit of the provisions of any of the deemed marine licences to another person by the undertaker pursuant to an agreement under this article.

Application and modification of legislative provisions

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

“or

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

(2) The provisions of the Neighbourhood Planning Act 2017⁽²⁾ 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 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.

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽³⁾ (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)⁽⁴⁾ 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—

(1) S.I. 1997/1160.

(2) 2017 c. 20.

(3) 1990 c. 43. Section 82 was amended by section 107 and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25), section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and section 79 was amended by sections 101 and 102 of the Clean Neighbourhoods and Environment Act 2005 (c. 16), and by section 120 and paragraph 89 of Schedule 22 to the Environment Act 2005. There are other amendments to this Act which are not relevant to the Order.

(4) Section 79(1) was amended by sections 101 and 102 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance 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 site) or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974⁽⁵⁾; or
 - (ii) is a consequence of the construction or maintenance 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 which is being used in compliance with requirement 27 (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 does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.

(5) 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 (c. 43) and Schedule 24 to the Environment Act 1995 (c. 25). There are other amendments to the 1974 Act which are not relevant to the Order.