
STATUTORY INSTRUMENTS

2014 No. 2935

**The Able Marine Energy Park
Development Consent Order 2014**

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5.—(1) Subject to the provisions of this Order and to the requirements in Schedule 11 (requirements) the undertaker is granted development consent for the authorised development, to be carried out within the Order limits.

(2) Subject to article 6 (limits of deviation) the authorised development may only be constructed or carried out in the lines and situations shown on the works plans and at the levels shown on the sections.

Limits of deviation

6. In carrying out the authorised development the undertaker may—
- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation; and
 - (b) deviate vertically from the levels of the authorised development shown on the sections—
 - (i) to any extent not exceeding 1 metre upwards; or
 - (ii) to any extent downwards as may be found necessary or convenient.

Period for completion of work

7. If the authorised development is not completed within 10 years from the coming into force of this Order or such extended time as the Secretary of State may on the application of the undertaker allow, then on the expiration of that period or such extended time (as the case may be) the rights granted by this Order to the undertaker for making and maintaining the works cease except as to so much of them as is then substantially commenced.

Jurisdiction of the Harbour Authority

8.—(1) Regardless of the functions of AB Ports exercisable within its limits, the Company is to be the harbour authority for the area of jurisdiction.

(2) Regardless of any provision of the 1847 Act as incorporated by article 3 (incorporation of the 1847 Act), the area within which the Harbour Authority and the dockmaster may exercise their functions under this Order is to be the area of jurisdiction.

(3) The jurisdiction of the Harbour Authority over vessels within the area of jurisdiction does not extend to—

- (a) any vessel unless it is at anchor or otherwise moored or is causing an obstruction within the area of jurisdiction; or
 - (b) signalling or any other activity connected with the movement of the vessel.
- (4) Where any person referred to in paragraph (5)(a) considers that there is an actual or anticipated conflict between—
- (a) the exercise of any function of any person mentioned in paragraph (5)(a); and
 - (b) the exercise of any function of any person mentioned in paragraph (5)(b),
- then that person may give notice to the relevant person in paragraph (5)(b).
- (5) The persons referred to in paragraph (4) are—
- (a) AB Ports, C.RO and the harbour master; and
 - (b) the Harbour Authority and the dockmaster.
- (6) The notice referred to in paragraph (4) must set out any requirements concerning the exercise of the relevant function by the relevant person mentioned in paragraph (5)(b).
- (7) The requirements referred to in paragraph (6) may—
- (a) make general provision in relation to the exercise of functions over time; or
 - (b) make specific provision about the exercise of a particular function or functions on a particular occasion.
- (8) If—
- (a) a notice sets out requirements falling within paragraph (7)(a) it must be made in writing; and
 - (b) a notice sets out requirements falling within paragraph (7)(b) it may be made in writing or in any other manner considered appropriate by the person giving the notice.
- (9) On receipt of a notice given under paragraph (4), the recipient of the notice must comply with the notice.
- (10) Except where expressly provided elsewhere in this Order, no person mentioned in paragraph (5)(b) is obliged to seek any permission or otherwise notify any person mentioned in paragraph (5)(a) prior to exercising any function.
- (11) Subject to the requirements of any notice given under paragraph (4), the functions of the Harbour Authority and the dockmaster must be exercised in accordance with Part 1 of Schedule 9 (for the protection of the Humber Conservancy) and Part 6 of Schedule 9 (for the protection of C.RO).

Agreements entered into by the Company etc.

9. Any agreement or undertaking entered into by the Company before the coming into force of this Order in connection with the proposed exercise of its functions as Harbour Authority is binding upon the Harbour Authority regardless of the fact that it was entered into by the Company before it was established as the Harbour Authority by article 8 (jurisdiction of the Harbour Authority) unless any provision of the agreement or undertaking would be outside the statutory functions of the Harbour Authority.

Maintenance of authorised development

10. The undertaker may at any time maintain the authorised development and within the limits of the harbour, from time to time relay temporarily or permanently the authorised development, except to the extent that this Order or an agreement made under it provides otherwise.

Provision of works

11.—(1) The undertaker may from time to time within the area of jurisdiction provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the authorised development or the operation of the undertaking, and for this purpose the undertaker may construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without limitation on the scope of paragraph (1) the undertaker may within the area of jurisdiction carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including—

- (a) works for the accommodation or convenience of vessels (including but not limited to berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);
- (b) works to divert, remove or replace apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines; and
- (c) landscaping and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.

(3) Article 3 of, and Part 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(1) apply as if this Order were a grant of planning permission.

Benefit of Order

12. Subject to article 13 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the Company.

Consent to transfer benefit of Order

13.—(1) The undertaker may, with the 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 rights as may be agreed between the undertaker and the transferee; or
- (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 rights as may be so agreed.

(2) The powers of paragraph (1)(a) may only be exercised by the Company or a transferee.

(3) A lessee (“the granting lessee”) may not make a grant under paragraph (1)(b)—

- (a) for a longer period than the period of the grant to the granting lessee; or
- (b) conferring any benefit or right that is not conferred by the grant to the granting lessee.

(4) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(1) SI 1995/418. Relevant amending instruments are S.I. 1999/293, S.I. 2003/2155 and S.I. 2011/1824.

(5) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) 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.

(6) Before giving consent under this article, the Secretary of State must consult the harbour master and such other parties as the Secretary of State thinks appropriate.

Guarantees in respect of payment

14.—(1) The authorised development must not be commenced and the undertaker must not begin to exercise the powers conferred by Part 5 (powers of acquisition) unless either guarantees or alternative forms of security for that purpose in respect of—

- (a) the liabilities of the undertaker to pay compensation under this Order; and
- (b) the liabilities of the undertaker to construct and maintain the compensatory environmental habitat referred to at paragraph 4(a) of Schedule 1 (authorised development) and any additional compensatory habitat identified in the compensation environmental management and monitoring plan,

are in place which have been approved by the relevant planning authority.

(2) A guarantee given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable.