
STATUTORY INSTRUMENTS

2021 No. 1414

The Norfolk Boreas Offshore Wind Farm Order 2021

PART 2

Principal Powers

Benefit of the Order

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

(2) Subject to paragraphs (4), (5) and (6), 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 (excluding the deemed marine licences referred to in paragraph (3) below) 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 this Order (excluding the deemed marine licences referred to in paragraph (3) below) and such related statutory rights as may be so agreed;

except where paragraph (10) applies, in which case no consent of the Secretary of State is required.

(3) Subject to paragraph (5), 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 (10) applies, in which case no consent of the Secretary of State is required.

(4) The undertaker must 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 whole of the benefit of the provisions of the deemed marine licences.

(6) The Secretary of State shall consult National Grid before giving consent to the transfer or grant to a person of any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (3) above).

(7) Where an agreement has been made in accordance with paragraph (2) or (3) references in this Order to the undertaker, except in paragraph (8), (9), or [F1(J1)], include references to the transferee or lessee.

(8) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) or (3) 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.

(9) Where an agreement has been made in accordance with paragraph (2) 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.
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) or (3) 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.

(10) The consent of the Secretary of State is required for the exercise of powers under paragraph (2) or (3) except where—

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

(11) The provisions of article 9 (street works), article 11 (stopping up of streets), article 18 (compulsory acquisition of land), article 20 (compulsory acquisition of rights and the imposition of restrictive covenants), 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. 4C to 12B a person who ^{F2}holds a licence under section 6 of the 1989 Act]; or
- (b) in respect of functions under article 9 (street works) relating to a street, a street authority.

(12) 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.

(13) A notice required under paragraphs (4) and (12) 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 (14), the date on which the transfer will take effect;
 - (iii) the provisions to be transferred or granted; and

- (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (9), will apply to the person exercising the powers transferred or granted; and
 - (v) except where paragraph (10)(a) or 10(b) applies, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) where relevant, be accompanied by—
- (i) 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.
- (14) The date specified under paragraph (13)(a)(ii) must not be earlier than the expiry of fourteen days from the date of the receipt of the notice.
- (15) The notice given under paragraph (12) 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.
- (16) 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.

- F1** Art. 6(7) bracket inserted (12.8.2022) by [The Norfolk Boreas Offshore Wind Farm \(Corrections\) Order 2022 \(S.I. 2022/901\)](#), art. 1(2), **Sch.**
- F2** Words in art. 6(11)(a) substituted (12.8.2022) by [The Norfolk Boreas Offshore Wind Farm \(Corrections\) Order 2022 \(S.I. 2022/901\)](#), art. 1(2), **Sch.**

Commencement Information

- I1** Art. 6 in force at 1.1.2022, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Norfolk Boreas Offshore Wind Farm Order 2021, Section 6.