
STATUTORY INSTRUMENTS

2023 No. 778

The Boston Alternative Energy Facility Order 2023

PART 2

PRINCIPAL POWERS

Development consent granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

Maintenance of drainage works

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(1).

Operation of the authorised development

6.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(2) Other than as set out in this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of an electricity generating station.

Limits of deviation

7.—(1) The authorised development is to be carried out and maintained within the limits of deviation shown and described on the works plans and in carrying out the authorised development the undertaker may—

(1) 1991 c. 59. The definition of “drainage” was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

- (a) deviate laterally within the limits of deviation for those works shown on the works plans to the extent the undertaker considers to be necessary or convenient;
- (b) to any extent downwards as may be necessary, convenient or expedient;
- (c) in respect of any boundary between the areas of two numbered works deviate laterally by up to 20 metres either side of the boundary as shown on the works plans, with the exception of any boundary with Work No. 1A(iv), any boundary with Work No. 2(d) and any boundary with Work No. 4,

except that these maximum limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation by the undertaker with the relevant planning authority, the relevant statutory nature conservation body and the Environment Agency to the extent that it relates to matters relevant to their functions, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) applies to an application to the Secretary of State for certification under paragraph (1) as though it were an approval required by a requirement under that Schedule.

Benefit of this Order

8.—(1) Subject to paragraphs (2) and (3) and (4) and article 9 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of the owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

(3) Paragraph (1) does not apply to Work No. 3A for which the provisions of this Order have effect for the benefit of the undertaker and Harlaxton Engineering Services Limited.

(4) Paragraph (1) does not apply to Work No. 3B for which the provisions of this Order have effect for the benefit of the undertaker and Western Power Distribution Plc.

Consent to transfer benefit of the Order

9.—(1) Subject to paragraph (4) the undertaker may—

- (a) transfer to another person (“the transferee”) all or any part of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”), for a period agreed between the undertaker and the lessee, all or any part of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be agreed between the undertaker and the lessee.

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

(3) 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.

(4) The consent of the Secretary of State is required for the exercise of the powers under paragraph (1) except where—

- (a) the transferee or lessee holds a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989(2); or
 - (b) the time limits for all 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 claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of any claims made;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.
- (5) The Secretary of State must consult the MMO before giving consent under paragraph (1) to the transfer or grant to another person of the benefit of the provisions of the deemed marine licence.
- (6) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights referred to in paragraph (1).
- (7) The notification referred to in paragraph (6) must state—
- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
 - (b) subject to paragraph (8), the date on which the transfer will take effect;
 - (c) the powers to be transferred or granted;
 - (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
 - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.
- (8) The date specified under paragraph (7)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.
- (9) The notice given under paragraph (6) 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.