
STATUTORY INSTRUMENTS

2016 No. 880

The Triton Knoll Electrical System Order 2016

PART 2

Principal powers

Development consent granted by 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 Work may be constructed and maintained only within the limits of deviation for that Work.

(3) Schedule 1 (authorised project) has effect.

Maintenance of authorised project

4. 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.

Transfer of benefit of Order

5.—(1) Except as otherwise provided in this Order, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) The undertaker may—

- (a) transfer to another person (the “transferee”) any or all of the benefit of the provisions of this Order (including the deemed marine licence) and such related statutory 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 (including the deemed marine licence) and such related statutory rights as may be agreed between the undertaker and the lessee.

(3) The consent of the Secretary of State is required for a transfer or grant under paragraph (2), except where—

- (a) the transfer or grant is to a person licensed under section 6 of the 1989 Act⁽¹⁾; or

(1) Section 6 was substituted by section 30 of the Utilities Act 2000 (c.27) and amended by sections 136 and 145 of, and by Schedule 23 to, the Energy Act 2004 (c.20) and by S.I. 2011/2704 and 2012/2400.

- (b) the time limits for claims for compensation in respect of the acquisition of land or effects on land under this Order have elapsed and either no such claim has been made or, if such a claim has been made,—
- (i) the claim has been comprised or withdrawn;
 - (ii) compensation has been paid in final settlement of the claim;
 - (iii) payment of compensation into court has taken place in lieu of settlement of the claim; or
 - (iv) a tribunal or court of competent jurisdiction has determined that no compensation is payable in respect of the claim.

(4) Where the consent of the Secretary of State is required for a transfer or grant under paragraph (2), the Secretary of State must consult the MMO before giving consent if the proposed transfer or grant is relevant to the exercise of functions within the MMO's jurisdiction.

(5) Where there is a transfer or grant under paragraph (2), the exercise by the transferee or, as the case may be, by the lessee of any benefit or right conferred by the transfer or grant is subject to the same restrictions, liabilities and obligations as would apply under this Order if the benefit or right were exercised by the undertaker.

(6) Despite anything in Part 4 of the 2009 Act (marine licensing), but subject to paragraphs (3) to (5), the undertaker may transfer or grant under paragraph (2) any of the provisions set out in Part 1 of the deemed marine licence together with the corresponding conditions set out in Part 2 of the licence (and subsections (7) and (8) of section 72 of the 2009 Act do not apply to such a transfer or grant).

(7) The undertaker must give notice in writing of any transfer or grant under paragraph (2)—

- (a) to the Secretary of State; and
- (b) if the transfer or grant is relevant to the exercise of functions within the MMO's or the relevant planning authority's jurisdiction, to the MMO or relevant planning authority (or to both),

at least 10 days before the transfer or grant takes effect or, if the transfer or grant is relevant to the exercise of functions within the MMO's jurisdiction and the Secretary of State's consent is not required for the transfer or grant, at least 28 days before the transfer or grant takes effect.

(8) The notice must—

- (a) state—
 - (i) the name and contact details of the transferee or lessee;
 - (ii) the date on which the transfer or grant will take effect;
 - (iii) the provisions to be transferred or granted; and
 - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (5), will apply to the transferee or lessee;
- (b) be accompanied by—
 - (i) where relevant, a plan showing the Works or areas to which the transfer or grant relates;
 - (ii) where the Secretary of State's consent is needed for the transfer or grant, a copy of the consent; and
 - (iii) a copy of the document effecting the transfer or grant signed by the person making the transfer or grant and the transferee or lessee; and
- (c) be signed by the person making the transfer or grant and the transferee or lessee.

(9) Where there is a transfer or grant under paragraph (2), references in this Order to the undertaker, except in paragraph (5), include references to the transferee or the lessee.

Application and modification of legislative provisions

6.—(1) Regulation 6 of the Hedgerows Regulations 1997(2) is modified so as to read for the purposes of this Order only as if the following were inserted after paragraph (1)(j)—

“(k) for carrying out development which has been authorised by development consent granted under the Planning Act 2008.”.

(2) The following provisions 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—

- (a) the Environmental Permitting (England and Wales) Regulations 2010(3), to the extent that they require a permit for anything that would have required consent under section 109 of the Water Resources Act 1991 immediately before the repeal of that section;
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991(4) that require consent or approval for the carrying out of works;
- (c) section 23 of the Land Drainage Act 1991(5) (prohibition of obstructions, etc. in watercourses); and
- (d) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991 (powers to make byelaws) that require consent or approval for the carrying out of works.

(3) The provisions of the Lindsey County Council (Sandhills) Act 1932(6) do not apply in relation to the exercise of any power conferred by this Order.

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(7) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order may be made, and no fine imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and 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(8);
- (b) is a consequence of the construction or maintenance of the authorised project and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised project and cannot reasonably be avoided.

(2) [S.I. 1997/1160](#). Regulation 6 was amended by paragraph 35 of Schedule 1 to [S.I. 2015/377](#).

(3) [S.I. 2010/675](#). See amendments made by [S.I. 2016/475](#).

(4) Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c.16), section 84(2) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009, paragraph 49 of Schedule 2 to the Flood and Water Management Act 2010 (c.29) and paragraph 315 of Schedule 2 to [S.I. 2013/755](#). Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c.25) and section 224 of, and paragraph 24 of Schedule 16 and Part 5 of Schedule 22 to, the Marine and Coastal Access Act 2009. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(5) [1991 c.59](#). Section 23 was amended by paragraph 192 of Schedule 22 to the Environment Act 1995, paragraph 32 of Schedule 2 to the Flood and Water Management Act 2010 and [S.I. 2013/755](#). Section 66 was amended by paragraph 38 of Schedule 2 to the Flood and Water Management Act 2010 and by section 86(3) of the Water Act 2014.

(6) 1932 c. lxxxvi.

(7) [1990 c.43](#). Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995. Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c.40) and paragraph 6 of Schedule 17 to the Environment Act 1995.

(8) [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 and Schedule 24 to the Environment Act 1995.

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(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) 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.