

---

STATUTORY INSTRUMENTS

---

**2017 No. 826**

The East Anglia THREE Offshore Wind Farm Order 2017

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) Subject to the requirements, Work Nos. 1 to 5A must be constructed within the Order limits seaward of MHWS and Work Nos. 5B to 69 must be constructed within the Order limits landward of MLWS.

**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 paragraphs (2) and (3), 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) 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 (excluding the deemed marine licences) and such related statutory rights as may be so agreed.

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

- (a) where an agreement has been made in accordance with paragraph (1)(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 (1)(b), grant to the lessee, for the duration of the period mentioned in paragraph (1)(b), the whole of any of the deemed marine licences and such related statutory rights as may be so agreed.

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

(4) Where paragraph (8) applies no consent of the Secretary of State is required.

(5) Where an agreement has been made in accordance with paragraph (1) or (2) 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) or (2) 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 (2)—

- (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 10 (temporary stopping up of streets), article 15 (compulsory acquisition of land), article 17 (compulsory acquisition of rights), article 23 (temporary use of land for carrying out the authorised project) and article 24 (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 Works Nos. 5B to 69 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) Where paragraph (8) applies, the undertaker must provide written notification to the Secretary of State, the MMO, and the relevant planning authority at least 14 days prior to transferring and/or granting any benefit under paragraph (1) or (2).

### **Application and modification of legislative provisions**

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

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

---

(1) S.I. 1997/1160.

### **Defence to proceedings in respect of statutory nuisance**

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(2)</sup> (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) 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—
  - (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) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(3)</sup>; 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 26 (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) (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.

---

(2) 1990 c.43. There are amendments to this Act which are not relevant to the Order.

(3) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.