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STATUTORY INSTRUMENTS

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**2020 No. 547**

**The Cleve Hill Solar Park Order 2020**

**PART 2**

**PRINCIPAL POWERS**

**Development consent etc. granted by this Order**

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

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plan.

**Power to maintain authorised development**

**4.—**(1) 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.

(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 (marine licensing) of the 2009 Act for offshore works not covered by the deemed marine licence.

(3) This article only authorises the carrying out of maintenance works within the Order limits.

**Consent to transfer 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) Subject to paragraph (4), 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 (including the deemed marine licence, in whole or in part) 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 (including the deemed marine licences, in whole or in part) and such related statutory rights as may be so agreed,

except where paragraph (7) applies, in which case no consent of the Secretary of State is required.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraphs (6) and (8), are to include references to the transferee or lessee.

(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 must consult the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the provisions of the deemed marine licence.

- (6) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (2)—
- (a) the benefit transferred or granted (“the transferred benefit”) must include 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 will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and
  - (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) 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.
- (7) This paragraph applies to any provisions of this Order and its related statutory rights where—
- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc) 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 will be payable.
- (8) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State and National Grid Electricity Transmission PLC, and if such transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority.
- (9) The notice required under paragraphs and (8) 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 (10), the date on which the transfer will take effect;
    - (iii) the provisions to be transferred or granted;
    - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (6)(c), will apply to the person exercising the powers transferred or granted; and
    - (v) where paragraph (7) does not apply, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land; and
  - (b) be accompanied by—
    - (i) where relevant, 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.
- (10) The date specified under paragraph (9)(a)(ii) in respect of a notice served in respect of paragraph (8) must not be earlier than the expiry of five days from the date of the receipt of the notice.

(11) The notice given under paragraph (8) 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.

(12) Sections 72(7) and (8) (variation, suspension, reservation and transfer) of the 2009 Act do not apply to a transfer or grant of the whole or part of the benefit of the provisions of the deemed marine licences to another person by the undertaker pursuant to an agreement under paragraph (1).

(13) The provisions of articles 8 (street works), 10 (temporary stopping up of streets), 16 (compulsory acquisition of land), 18 (compulsory acquisition of rights), 24 (temporary use of land for carrying out the authorised development) and (temporary use of land for maintaining the authorised development) are to have effect only for the benefit of the named undertaker and a person who is a transferee or lessee who is also—

- (a) in respect of Work Nos. 1 to 9 a person who holds a licence under the 1989 Act; or
- (b) in respect of functions under article 0 (street works) relating to street, a street authority.

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

6. The provisions of the Neighbourhood Planning Act 2017(1) insofar as they relate to temporary possession of land under articles 24 (temporary use of land for carrying out the authorised development) and 25 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

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

7.—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(2) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act 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 development and that the nuisance is attributable to the carrying out of the authorised development 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(3); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) is a consequence of the use of the authorised development 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 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do 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 development.

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(1) 2017 c.20.

(2) 1990 c.43

(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.

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**Status:** *This is the original version (as it was originally made).*

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