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STATUTORY INSTRUMENTS

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**2017 No. 826**

**The East Anglia THREE Offshore Wind Farm Order 2017**

**PART 7**

Miscellaneous and general

**Application of landlord and tenant law**

**29.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

**Operational land for purposes of the 1990 Act**

**30.** Development consent granted by this Order is treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

**Felling or lopping of trees and removal of hedgerows**

**31.**—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised project—

- (a) subject to paragraph (2) above, remove any hedgerows within the Order limits and specified in Schedule 9, Part 1 (removal of hedgerows) that may be required for the purposes of carrying out the authorised project; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 9, Part 2 (removal of important hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(1).

### **Certification of plans etc.**

**32.—**(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the land plan (document reference 2.2 – version 1);
- (b) the works plan (document reference 2.4 – revision A onshore and revision B offshore);
- (c) the access to works plan (document reference 2.5);
- (d) the temporary stopping up of public rights of way plan (document reference 2.6 – revision B);
- (e) the important hedgerows plan (document reference 2.10 – revision 4);
- (f) the radar line of sight coverage plan (document reference 2.11);
- (g) the book of reference (December 2016 – version 3);
- (h) the outline code of construction practice (November 2016 – revision B) (document reference 8.1);
- (i) the design and access statement (October 2016) (document reference 8.3);
- (j) the outline written scheme of investigation (onshore) (November 2016 – version 2) (document reference 8.4);
- (k) the outline written scheme of investigation (offshore) (November 2016 – version 2) (document reference 8.5);
- (l) the outline landscape and ecological management strategy (November 2016 – version 2) (document reference 8.6);
- (m) the outline traffic management plan (November 2015 – version 1) (document reference 8.7);
- (n) the outline travel plan (November 2015 – version 1) (document reference 8.8);
- (o) the outline access management plan (November 2016 – revision B) (document reference 8.9);
- (p) the outline offshore operations and maintenance plan (November 2015 – version 1) (document reference 8.10);
- (q) the outline navigation monitoring strategy (November 2015 – version 1) (document reference 8.11);

- (r) the in principle monitoring plan (October 2016 – version 2) (document reference 8.12);
- (s) the draft marine mammal mitigation protocol (November 2015 – version 1) (document reference 8.15);
- (t) the In principle East Anglia Three Project Southern North Sea pSAC Site Integrity Plan (December 2016); and
- (u) the Environmental Statement (document references 6.1 – 6.4).

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

### **Arbitration**

**33.** Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

### **Requirements, appeals, etc.**

**34.—**(1) Sub-section (1) of section 78 of the 1990 Act applies to the development consent granted by this Order and to the requirements numbered 11 to 31 and 36 except that it is modified so as to read for the purposes of this Order only as if there were inserted after subsection (b) the following—

“(bb) refuse an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or grant it subject to conditions; or”

(2) Sections 78 and 79 of the 1990 Act have effect in relation to any appeal under the terms of this article except that the Secretary of State in question is the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order if section 103(1) of the 2008 Act applied.

(3) The terms of any development order, and other rules and regulations which apply to applications pursuant to conditions or the subject matter of section 78 of the 1990 Act apply, insofar as they are not inconsistent with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and any other orders, rules or regulations made under the 2008 Act, to any application or appeal made under the requirements specified in paragraph (1).

### **Abatement of works abandoned or decayed**

**35.** Where Work No. 1(a) to (d) or Work No. 2 or any part of those works is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and restore or remove Work No. 1(a) to (d) or Work No. 2 or any relevant part of those works, without prejudice to any notice

served under section 105(2) of the 2004 Act. The notice may also require the restoration of the site of the relevant part(s) of Work No. 1(a) to (d) or Work No. 2 to a safe and proper condition within an area and to such an extent as may be specified in the notice.

### **Saving provisions for Trinity House**

**36.** Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

### **Crown rights**

**37.—**(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

### **Protective provisions**

**38.** Schedule 8 (protective provisions) has effect.