
STATUTORY INSTRUMENTS

2020 No. 1656

The Hornsea Three Offshore Wind Farm Order 2020

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

32.—(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 prejudices 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.

Commencement Information

II Art. 32 in force at 22.1.2021, see [art. 1](#)

Operational land for purposes of the 1990 Act

33. 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 not being operational land).

Commencement Information

I2 Art. 33 in force at 22.1.2021, see [art. 1](#)

Felling or lopping of trees and removal of hedgerows

34.—(1) Subject to article 35 (trees subject to tree preservation orders) the undertaker may fell or lop or cut back to roots of any tree or shrub within or overhanging land within the Order limits or near any part of the authorised project if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with onshore site preparation works, 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 not do any 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 (determination of questions of disputed compensation) of the 1961 Act.

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

- (a) subject to paragraph (2) above, remove any hedgerows within the Order limits and specified in Schedule 10, 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 10, Part 2 (removal of important hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerows Regulations 1997 ^{M1}.

Commencement Information

I3 Art. 34 in force at 22.1.2021, see [art. 1](#)

Marginal Citations

M1 [S.I.1997/1160](#).

Trees subject to tree preservation orders

35.—(1) Subject to paragraph (2), the undertaker must not fell or lop or cut back the roots of any tree within or overhanging land which is the subject of a tree preservation order.

(2) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made before and after 14 May 2018 or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with onshore site preparation works the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(3) In carrying out any activity authorised by paragraph (2)—

- (a) the undertaker shall do no unnecessary damage to any tree and shall pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act shall not apply.

(4) The authority given by paragraph (2) shall constitute a deemed consent under the relevant tree preservation order.

(5) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, shall be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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Commencement Information

I4 Art. 35 in force at 22.1.2021, see [art. 1](#)

Certification of plans and documents, etc.

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

- (a) the book of reference;
- (b) design objectives and principles;
- (c) the Development Principles;
- (d) the environmental statement;
- (e) the location plan;
- (f) the land plans;
- (g) the offshore Order limits and grid coordinates plan;
- (h) the onshore Order limits plan;
- (i) the works plans;
- (j) the access to works plan;
- (k) the streets plan;
- (l) the public rights of way plan;
- (m) the tree preservation order and hedgerow plan;
- (n) the crown land plans – onshore and offshore;
- (o) the onshore limits of deviation plan;
- (p) the outline construction management plan;
- (q) the outline construction traffic management plan;
- (r) the outline code of construction practice;
- (s) the outline ecological management plan;
- (t) the outline landscape plan;
- (u) the outline onshore written scheme of investigation;
- (v) the in-principle monitoring plan;
- (w) the outline offshore written scheme of investigation;
- (x) the outline fisheries coexistence and liaison plan;
- (y) the in principle Hornsea Three Southern North Sea Special Area of Conservation Site Integrity Plan;
- (z) the Markham's Triangle exclusion zone plan;
- (aa) the kittiwake compensation plan; and

- (bb) the sandbanks compensation strategy.
 - (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 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.

Commencement Information

I5 Art. 36 in force at 22.1.2021, see [art. 1](#)

Arbitration

37.—(1) Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 13 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.

Commencement Information

I6 Art. 37 in force at 22.1.2021, see [art. 1](#)

Requirements, appeals, etc.

38.—(1) [^{F1}Subsection] (1) of section 78 (right to appeal against planning decisions and failure to take such decision) of the 1990 Act applies to the development consent granted by this Order and to the requirements except that it is modified so as to read for the purposes of this Order only as follows—

- (a) after “local planning authority” insert “ or Secretary of State ”
- (b) after subsection (b) insert the following—
 - “refuse or fails to determine 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”
- (c) after [^{F2}subsection] (1), insert the following—
 - “(1A) Where the appeal under sub-section (1) relates to a decision by the Secretary of State, the appeal shall be decided by a Secretary of State who would not be responsible for determining an application for development consent with the subject matter of the Hornsea Three Offshore Wind Farm Order 2020 if section 103(1) of the 2008 Act applied.”

(2) Sections 78 and 79 (determination of appeals) 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).

Textual Amendments

- F1** Word in [art. 38\(1\)](#) substituted (21.5.2021) by [The Hornsea Three Offshore Wind Farm \(Correction\) Order 2021 \(S.I. 2021/599\)](#), [art. 1\(2\)](#), [Sch.](#)
- F2** Word in [art. 38\(1\)\(c\)](#) substituted (21.5.2021) by [The Hornsea Three Offshore Wind Farm \(Correction\) Order 2021 \(S.I. 2021/599\)](#), [art. 1\(2\)](#), [Sch.](#)

Commencement Information

- I7** Art. 38 in force at 22.1.2021, see [art. 1](#)

Abatement of works abandoned or decayed

39. Where Work Nos 1, 2 or 3 or all of them or any part of them, is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, by notice in writing require the undertaker at its own expense either to repair, make safe and restore one or any of those Works, or any relevant part of them, or to remove them and, without prejudice to any notice served under section 105(2) of the 2004 Act ^{M2} restore the site to a safe and proper condition, to such an extent and within such limits as may be specified in the notice.

Commencement Information

- I8** Art. 39 in force at 22.1.2021, see [art. 1](#)

Marginal Citations

- M2** [Section 105\(2\)](#) was substituted by section 69(3) of the [Energy Act 2008 \(c.32\)](#).

Saving provisions for Trinity House

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

Commencement Information

- I9** Art. 40 in force at 22.1.2021, see [art. 1](#)

Crown rights

41.—(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 take, 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.

Commencement Information

I10 Art. 41 in force at 22.1.2021, see [art. 1](#)

Protective provisions

42. Schedule 9 (protective provisions) has effect.

Commencement Information

I11 Art. 42 in force at 22.1.2021, see [art. 1](#)

Funding

43.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land.

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 20 (compulsory acquisition of rights);
- (c) article 21 (private rights);
- (d) article 23 (acquisition of subsoil only);
- (e) article 25 (rights under or over streets);
- (f) article 26 (temporary use of land for carrying out the authorised project);
- (g) article 27 (temporary use of land for maintaining the authorised project); and
- (h) article 28 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Commencement Information

112 Art. 43 in force at 22.1.2021, see [art. 1](#)

Service of notices

44.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978^{M3} (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any

part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

[^{F3}(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.]

Textual Amendments

F3 Art. 44(10) inserted (21.5.2021) by [The Hornsea Three Offshore Wind Farm \(Correction\) Order 2021 \(S.I. 2021/599\)](#), art. 1(2), [Sch.](#)

Commencement Information

I13 Art. 44 in force at 22.1.2021, see [art. 1](#)

Marginal Citations

M3 [1978 c.30](#). Section 7 was amended by paragraph 19 of Schedule 10 to the [Road Traffic Regulation Act 1984 \(c.27\)](#). There are other amendments not relevant to this Order.

Compensation provisions

45. Schedule 14 (compensation measures) has effect.

Commencement Information

I14 Art. 45 in force at 22.1.2021, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Hornsea Three Offshore Wind Farm Order 2020, PART 7.