
STATUTORY INSTRUMENTS

2015 No. 1386

The Swansea Bay Tidal Generating Station Order 2015

PART 2

Principal powers

Development consent, etc. granted by Order

3.—(1) Subject to the provisions of this Order and to the Requirements in Part 3 of Schedule 1, the undertaker is granted development consent for the authorised development.

(2) The authorised development must be constructed—

- (a) within the Order limits;
- (b) in the lines or situations shown on the works plans;
- (c) in respect of the limits of deviation applicable to specific works as shown on the works plans, within those limits of deviation.

(3) In constructing or maintaining the authorised development, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation, subject to the maximum dimensions set out in Part 2 (dimensions of structures) of Schedule 1;
- (b) deviate vertically from the levels shown on works plans 2.2.11A to 2.2.16A (the marine works seawall sections) to any extent downwards as may be found necessary or convenient.

(4) In the case of conflict between the works plans or the plans or drawings set out in Schedule 7 (documents to be certified) and the works as set out in Parts 1A and 1B of Schedule 1 or the maximum dimensions set out in Part 2 of that Schedule, the description of the works in Schedule 1 are to prevail, and the maximum dimensions must not exceed those set out in Part 2 of that Schedule.

Maintenance of authorised development

4.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order, or any scheme or agreement made under this Order, provides otherwise.

(2) This article authorises the maintenance of the authorised development within the Order limits only.

Operation of generating station, etc.

5.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

Benefit of Order

- 6.—(1) Subject to paragraph (2), the relevant provisions are for the benefit of the undertaker only.
- (2) The undertaker may, with the consent of the Secretary of State,—
- (a) transfer to another person (the “transferee”) any or all of the benefit of the relevant provisions 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 relevant provisions and such related statutory rights as may be agreed between the undertaker and the lessee.
- (3) 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 Tidal Lagoon (Swansea Bay) plc⁽¹⁾ (company number 08141301).
- (4) In this Order, “undertaker” means—
- (a) in relation to a relevant provision or related statutory rights, Tidal Lagoon (Swansea Bay) plc or, where the benefit of a relevant provision or related statutory rights are transferred or granted under paragraph (2), any person who for the time being has the benefit of the provision or related statutory rights;
 - (b) in the case of any other provision, Tidal Lagoon (Swansea Bay) plc or any other person who for the time being has the benefit of the provision under section 156 (benefit or order granting development consent) of the 2008 Act.
- (5) In this article, “relevant provision” means any of the following—
- (a) articles 9 to 11;
 - (b) articles 13 to 37;
 - (c) article 47.

Guarantees in respect of payment of compensation, etc.

- 7.—(1) The authorised development must not be commenced, and the undertaker must not exercise the powers in articles 24 to 37, until—
- (a) subject to paragraph (3), security of £10.5 million has been provided in respect of the liabilities of the undertaker to pay compensation under this Order; and
 - (b) the City and County of Swansea Council has approved the security in writing.
- (2) The security referred to in paragraph (1) may include, without limitation, any 1 or more of the following—
- (a) the deposit of a cash sum;
 - (b) a payment into court;
 - (c) an escrow account;
 - (d) a bond provided by a financial institution;
 - (e) an insurance policy;
 - (f) a guarantee by a person of sufficient financial standing (other than the undertaker).
- (3) The City and County of Swansea Council may agree to the substitution of a different sum to that of £10.5 million referred to in paragraph (1), having regard to the liabilities of the undertaker to pay compensation under this Order existing at the time of the approval referred to in that paragraph.

⁽¹⁾ The registered office of Tidal Lagoon (Swansea Bay) plc is Suite 6 J Shed, Kings Road, Swansea SA1 8PL.

- (4) The authorised development must not be commenced until—
- (a) the undertaker has provided to the City and County of Swansea Council written evidence (which may comprise a written certificate given by a professional firm) of—
 - (i) the construction contracts in respect of Works No. 1a, 1b and 2a and a contract for the procurement of hydroturbines for installation in Work No. 2a; and
 - (ii) financial provision to secure the delivery of the works and procurement referred to in paragraph (i); and
 - (b) the City and County of Swansea Council has given written confirmation that it is satisfied that such financial provision is sufficient.
- (5) The undertaker must pay to the City and County of Swansea Council the reasonable and proper costs, charges and expenses that the City and County of Swansea Council may reasonably incur in obtaining legal or financial advice in respect of giving the confirmation of satisfaction referred to in paragraph (3)(b).
- (6) The City and County of Swansea Council is to have no liability to pay compensation in respect of the compulsory acquisition of land or otherwise under this Order.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽²⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1) (d), (e), (fb), (g), (ga) or (h) of that Act, no order is to be made, and no fine is to be 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 development and 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), of the Control of Pollution Act 1974⁽³⁾;
- (b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided;
- (c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and is attributable to the use of the authorised development in accordance with a noise monitoring scheme agreed with the relevant planning authority as described in Requirement 18 (monitoring of noise during construction); or
- (d) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (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) does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

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