
STATUTORY INSTRUMENTS

2015 No. 1386

The Swansea Bay Tidal Generating Station Order 2015

PART 7

Miscellaneous and general

Railway and navigation undertakings

38.—(1) Subject to the following provisions of this article, the undertaker may not under article 9 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act),—

- (a) is under the control or management of, or is maintainable by, a railway undertaker or a navigation authority; or
- (b) forms part of a level crossing belonging to such an undertaker or authority or to any other person,

except with the consent of the undertaker or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) does not apply to the carrying out under this Order of emergency works within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld or delayed.

(4) In this article, “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

Application of landlord and tenant law

39.—(1) This article applies to—

- (a) an agreement for leasing to a person the whole or any part of the authorised development or the right to operate it; and
- (b) an agreement entered into by the undertaker with a person for the construction, maintenance, use or operation of the authorised development or any part of it,

so far as any such agreement relates to the terms on which any land that is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) The operation of any agreement to which this article applies is not prejudiced by any enactment or rule of law regulating the rights and obligations of landlords and tenants.

(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 Town and Country Planning Act 1990

40. Development consent granted by this Order must be 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).

Felling or lopping of trees

41.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development or the Order land, 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 development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause 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, is to be determined under Part 1 of the 1961 Act.

Application of Energy Act 2004 in relation to decommissioning

42.—(1) The undertaker must submit to the Secretary of State a programme for decommissioning the parts of the authorised development below the mean low water mark (a "decommissioning programme").

(2) The decommissioning programme—

- (a) must set out measures to be taken for decommissioning the parts of the authorised development below the mean low water mark;
- (b) must contain an estimate of the expenditure likely to be incurred in carrying out those measures;
- (c) must make provision for the determination of the times at which, or the periods within which, those measures will have to be taken;
- (d) if it proposes that the authorised development will be wholly or partly removed from a place below the mean low water mark, must include provision about restoring that place to the condition that it was in before the construction of the authorised development; and
- (e) if it proposes that the authorised development will be left in position at a place below the mean low water mark or will not be wholly removed, must include provision about whatever continuing monitoring and maintenance will be necessary.

(3) The authorised development must not be commenced until the Secretary of State has approved the decommissioning programme.

(4) The provisions of the 2004 Act referred to in paragraph (5) apply as if those provisions were contained in this Order and as if—

- (a) the authorised development were a “relevant object” within the meaning of Chapter 3 (decommissioning of offshore installations) of Part 2 of that Act;
- (b) references in the provisions of that Act referred to in paragraph (5) to a decommissioning programme submitted to or approved by the Secretary of State under that Chapter included references to a decommissioning programme submitted to or approved by the Secretary of State under this article; and
- (c) the reference in section 112A(2)(a) of that Act to a person who has been, or may be, given a notice under section 105(2)(a) of that Act in relation to a relevant object included a reference to the undertaker.

(5) The provisions are—

- (a) section 106 (approval of decommissioning programmes);
- (b) section 108 (reviews and revisions of decommissioning programmes);
- (c) section 109(1) (carrying out of decommissioning programmes);
- (d) section 110 (default in carrying out decommissioning programmes), except for subsections (3) and (4);
- (e) section 110A (protection of funds held for purposes of decommissioning);
- (f) section 110B (section 110A: supplemental);
- (g) section 112 (duty to inform Secretary of State), except for subsections (2)(a) and (7);
- (h) section 112A (power of Secretary of State to require information and documents), except for subsections (8) and (9).

(6) A person must not disclose information obtained by virtue of a notice under section 112A(1) of the 2004 Act (as applied by paragraph (4)) unless the disclosure—

- (a) is made with the consent of the person by or on behalf of whom the information was provided;
- (b) is for the purpose of the exercise of the Secretary of State’s functions under this Order, the Electricity Act 1989(1) or Part 4 of the Petroleum Act 1998(2); or
- (c) is required by or under an enactment.

Development consent obligation

43.—(1) The undertaker may enter into an obligation relating to the authorised development under section 106 of the 1990 Act in respect of any land within the Order limits even though the undertaker may not be the owner of such land or any interest in it; and this paragraph applies to such an obligation entered into before or after this Order is made.

(2) From the date on which the undertaker acquires any land that is subject to an obligation to which paragraph (1) applies, section 106 of the 1990 Act applies as if the undertaker had been the owner of the land at the date of entering into the obligation.

(3) In this article and article 44, “obligation” has the same meaning as “planning obligation” in section 106 of the 1990 Act.

(1) 1989 c. 29.
(2) 1998 c. 17.

Development consent obligation: enforcement

44.—(1) Where the undertaker has entered into an obligation relating to the authorised development under section 106 of the 1990 Act, despite sections 1 and 106(3) and (9)(d) of that Act, the document recording the obligation may provide that a local planning authority, other than the local planning authority within whose area the land bound by the obligation is situated, may enforce the obligation.

(2) The document may so provide in relation to all or some of the obligations recorded in it.

Ancient Monuments and Archaeological Areas Act 1979

45. This Order has effect as a consent under the Ancient Monuments and Archaeological Areas Act 1979(3) in respect of the authorised development in respect of the pillboxes shown on planning drawings nos. 2.4.42 and 2.4.43 and tank traps located on the existing Swansea Port sea wall irrespective of the date upon which any such features are included in a Schedule under that Act.

Licences relating to water, etc.

46. The requirement under section 25 of the Water Resources Act 1991(4) to obtain a licence before constructing, altering, repairing or removing any impoundment works does not apply to the authorised development.

Byelaws

47.—(1) The undertaker may from time to time make and enforce byelaws regulating the use and operation of the authorised development, the maintenance of order on and about the authorised development and the conduct of all persons including employees of the undertaker while on and about the authorised development.

(2) Without limiting paragraph (1), byelaws made under this article may provide for—

- (a) regulating the admission and access to the seawalls forming part of the authorised development, in particular in the vicinity of the Swansea University Bay Campus;
- (b) preventing and removing obstructions or impediments within the authorised development;
- (c) preventing damage or injury to any goods, vehicles, plant, machinery, property or persons within the authorised development;
- (d) regulating the activities of divers, surfers, water skiers and other persons engaged in recreational pursuits within the authorised development;
- (e) prohibiting persons in or entering the authorised development from smoking in open spaces; and
- (f) preventing nuisances on the authorised works.

(3) Byelaws made under this article may—

- (a) provide for the creation of offences in respect of their breach, or the breach of any condition, requirement or direction imposed, made or given under them, that are triable summarily and whose maximum penalty is a fine not exceeding level 3 on the standard scale;
- (b) relate to the whole or to any part of the authorised development; and
- (c) make different provision for different parts of the authorised development or in relation to different classes of vehicles.

(3) 1979 c. 46.

(4) 1991 c. 57.

(4) Byelaws made by the undertaker under this Order come into force only when they have been confirmed by the Welsh Ministers.

(5) Before applying for any byelaws to be confirmed under this article, the undertaker must publish a notice of its intention to apply for the byelaws to be confirmed—

- (a) on 1 occasion in the London Gazette; and
- (b) on 2 occasions in successive weeks in a local newspaper circulating in the area of the authorised development.

(6) The notice must state—

- (a) the place at which and the times during which a copy of the proposed byelaws is to be available for public inspection; and
- (b) that persons may make representations about the proposed byelaws to the Welsh Ministers in writing within the period specified in the notice being a period of not less than 28 days after the date of publication of the last notice required by paragraph (5).

(7) For at least 28 days after the publication of the last notice required by paragraph (5), a copy of the proposed byelaws must be available for public inspection without payment at the principal office of the undertaker in the area of the authorised development at all reasonable times.

(8) The undertaker must supply a copy of the proposed byelaws or part of the proposed byelaws to a person who applies for it on payment of a reasonable charge.

(9) During the period specified in the notice in accordance with paragraph (5)(b), any person may make representations about the proposed byelaws to the Welsh Ministers in writing.

(10) The Welsh Ministers may, after the expiry of the period specified in the notice in accordance with paragraph (6)(b), confirm with or without modification or may refuse to confirm any of the proposed byelaws submitted and may fix a date on which any byelaws so confirmed are to come into force, and, if no date is so fixed, the byelaws come into force after the expiry of 28 days after the date on which they were confirmed.

(11) The Welsh Ministers may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as the Welsh Ministers may consider appropriate for the purpose of defraying any administrative expenses incurred by the Welsh Ministers in connection with confirmation, modification or refusal.

(12) A copy of any byelaws confirmed under this article must be printed and must be available for public inspection without payment at the principal office of the undertaker in the area of the authorised development at all reasonable times, and the undertaker must at the request of any person supply that person with a copy of such byelaws on payment of a reasonable charge.

(13) Byelaws under this article may vary or revoke any byelaws in respect of the authorised development made under any other provision at any time.

(14) Byelaws under this article may be varied or revoked by subsequent byelaws under this article.

Procedure in relation to certain approvals, etc.

48.—(1) Where an application is made to the relevant planning authorities or either of them for any consent, agreement or approval required by a Requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the Requirement were a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) the provisions of any orders, rules or regulations that provide in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission insofar as those provisions are not inconsistent with the

Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and any other orders, rules or regulations made under the 2008 Act.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it provides in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989.

Certification of plans, etc.

49.—(1) The undertaker must, as soon as practicable after the date on which this Order is made, submit to the Secretary of State copies of the documents listed in Schedule 7 (documents to be certified) for certification that they are true copies of the plans or 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.

Arbitration

50. 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.

Saving for Trinity House

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

Protection of interests

52. Schedule 8 (protective provisions) has effect.

Crown rights

53.—(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—

- (a) 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)—
 - (i) 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;
 - (ii) 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
 - (iii) belonging to a government department or the Welsh Government or held in trust for Her Majesty for the purposes of a government department or the Welsh Government without the consent in writing of the government department or the Welsh Government; or

(b) to exercise any right under this Order compulsorily to acquire an interest in any land that is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) 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.

Provisions for effect of Adaptive Environmental Management Plan

54.—(1) Where any Requirement provides for an AMEP as defined in Part 3 of Schedule 1, and any provision of that AEMP makes matters of dispute between the undertaker, any relevant planning authority and Natural Resources Wales subject to arbitration under this Order, article 50 (arbitration) applies.

(2) Where under the terms of an AMEP it is necessary for the officers of any relevant planning authority or Natural Resources Wales to attend any meetings of any group or to review any documents, the undertaker is liable for the reasonable and proper costs of those officers in respect of those activities.