
WELSH STATUTORY INSTRUMENTS

2004 No. 3054

The Scarweather Sands Offshore Wind Farm Order 2004

PART II
WORKS

Principal powers

Power to construct and maintain works

- 3.—(1) The undertaker may construct and maintain the scheduled works.
- (2) The undertaker may retain and maintain the existing mast.
- (3) Subject to article 4, the scheduled works must be constructed and maintained in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.
- (4) The undertaker may, within the limits of deviation for the scheduled works, carry out, provide and maintain such of the following works and facilities as may be necessary or expedient for the purposes of, in connection with, or in consequence of, the construction or maintenance of the scheduled works, namely—
- (a) temporary or permanent landing places, jetties, or moorings or other means of accommodating vessels in the construction or maintenance of the scheduled works;
 - (b) buoys, beacons, fenders and other navigational warning or ship impact protection works;
 - (c) works to alter the position of apparatus, including mains, sewers, drains and cables;
 - (d) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
 - (e) landscaping and other works to mitigate any adverse affects of the construction, maintenance or operation of the authorised works;
 - (f) works for the benefit or protection of land affected by the authorised works;
 - (g) one or more additional anemometry masts;
 - (h) such other works and apparatus, plant and machinery of whatever nature as may be necessary or expedient.

Power to deviate

- 4.—(1) In constructing or maintaining any scheduled work, the undertaker may deviate—
- (a) laterally from the lines or situations shown on the works plans within the limits of deviation and, in particular, the inter-turbine cables may connect within the limits of deviation with any of the wind turbines; and
 - (b) vertically from the levels shown on the sections in respect of—
 - (i) the height of the towers of the wind turbines to any extent not exceeding 24 metres downwards (subject to paragraph (2));

- (ii) the depth of the foundations of the wind turbines in the sea bed to any extent upwards and to any extent not exceeding 20 metres downwards;
- (iii) the cables comprised in Works Nos. 1 and 2 to any extent not exceeding 1 metre upwards or downwards (subject to paragraph (3));
- (iv) Work No. 2A, to any extent not exceeding 1 metre upwards or downwards;
- (v) Work No. 3 to any extent not exceeding 2 metres upwards or downwards;
- (vi) any overhead electric line comprised in Work No. 4 to any extent not exceeding 10 metres upwards or 3 metres downwards;
- (vii) any underground electric line comprised in Work No. 4 to any extent not exceeding 5 metres upwards or 12 metres downwards; and
- (viii) Work No. 5 to any extent not exceeding 1 metre upwards or downwards.

(2) There must be a minimum distance of 25 metres between the lowest point of the rotating blades of the wind turbines and the level of high water.

(3) Subject to such variation as is agreed not to be material by the National Assembly, the cables comprised in Works Nos. 1 and 2 must be laid at a depth of not less than 1.5 metres below the level of the seabed.

Streets

Power to execute street works

5.—(1) The undertaker may, for the purposes of the authorised works, enter upon so much of any street specified in columns (1) and (2) of Schedule 2 to this Order as is within the limits of deviation and may —

- (a) place apparatus in that street;
- (b) maintain apparatus in that street or change the position of such apparatus;
- (c) improve the surface of Heol Caer Bont between points A and F shown on the works plan for the purpose of providing an access to construct and maintain the authorised works; and
- (d) execute any works required for, or incidental to, the authorised works or any works referred to in sub-paragraphs (a), (b) and (c) (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).

(2) In this article, “apparatus” has the same meaning as in Part III of the Street Works Act.

Temporary stopping up of streets

6.—(1) The undertaker may, during and for the purposes of the execution of the authorised works, temporarily stop up the streets specified in columns (1) and (2) of Schedule 2 to this Order to the extent specified by reference to the letters in column (3) to that Schedule and may for any reasonable time —

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access at all times for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) The undertaker must not exercise the powers of this article in relation to any street specified as mentioned in paragraph (1) without first consulting the street authority.

(4) The provisions of the Street Works Act mentioned in paragraph (5) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the undertaker under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the undertaker.

(5) The provisions of the Street Works Act referred to in paragraph (4) are —

- (a) section 54 (advance notice of certain works);
- (b) section 55 (notice of starting date of works);
- (c) section 59 (general duty of street authority to co-ordinate works);
- (d) section 60 (general duty of undertakers to co-operate);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Any person who suffers loss by the suspension of a private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

Supplemental powers

Power to survey and investigate land

7.—(1) The undertaker may for the purposes of this Order —

- (a) survey or investigate any land which is both within the limits of deviation and is shown on the land plans and described in the book of reference;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (d) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (c).

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required, before or after entering the land produce written evidence of that person's authority to do so; and
- (b) may use such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article in a carriageway or footway without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) The undertaker must pay compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land; such compensation to be determined, in case of dispute, under Part I of the 1961 Act.

Protection of navigation and air traffic and control of noise

Tidal works not to be executed without approval of the Secretary of State

8.—(1) A tidal work must not be constructed or altered, except in accordance with plans and sections approved by the Secretary of State before the work is begun.

(2) If a tidal work is constructed or altered in contravention of this article or any condition or restriction imposed under this article—

- (a) the Secretary of State may by notice in writing require the undertaker at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and
- (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing will be recoverable from the undertaker.

Provision against danger to navigation

9. In case of injury to, or destruction or decay of, a tidal work or any part thereof, the undertaker must, as soon as reasonably practicable, notify Trinity House and lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

Abatement of works abandoned or decayed

10.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore the work or any part of it, or to remove the work and restore the site of the work to its former condition, to such an extent and within such limits as the Secretary of State may specify in the notice.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under this article.

(3) This article does not apply to any decommissioning of the authorised works in accordance with a decommissioning plan agreed with the Crown Estate Commissioners or approved by the National Assembly under any condition imposed in a licence granted under section 5 of the Food and Environment Protection Act 1985(1).

Survey of tidal works

11.—(1) The Secretary of State may at any time, if the Secretary of State deems it expedient, order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work; and any expenditure incurred by the Secretary of State in any such survey and examination will be recoverable from the undertaker.

(2) Subject to paragraph (3), such surveys must not be ordered more frequently than once a year; and before ordering such a survey—

- (a) the Secretary of State must consult the undertaker in order to establish what relevant survey information is already available; and

(1) 1985 c. 48.

- (b) give the undertaker an opportunity to carry out the survey itself.
- (3) Paragraph (2) does not apply in an emergency.

Permanent lights, navigational safety aids and colour

12.—(1) After the completion of the tidal works, the undertaker must exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must exhibit every night from sunset to sunrise lights for the prevention of danger to aircraft, of a shape, colour and character as directed by the Civil Aviation Authority.

(3) Unless the National Assembly otherwise directs, the undertaker must ensure that so much of any wind turbine as is above the level up to which Trinity House direct colouring for navigational safety reasons, and all nacelles and blades, are painted light grey.

Lights on tidal works during construction

13. The undertaker must at or near a tidal work during the whole time of the construction, alteration, enlargement, replacement, relaying, reconstruction or extension of the work exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

Active safety management system

14.—(1) The wind turbines must be operated in accordance with an active safety management system for the purpose of minimising the risk of vessels colliding with the towers or rotating blades of the wind turbines and to facilitate search and rescue activities.

(2) The details of the active safety management system must be approved by the Maritime and Coastguard Agency, but the system must include—

- (a) provision for each wind turbine to be marked by day and night with clearly visible identification systems;
- (b) provision for communication procedures between mariners in distress, the Maritime and Coastguard Agency and the central control room for the operation of the wind turbines when a vessel is in distress;
- (c) provision for the immediate shutting down of one or more of the wind turbines at the request of the Maritime and Coastguard Agency in a position which secures the maximum clearance between the lowest point of the blades and the water level; and
- (d) provision for testing the emergency procedures at times and in a manner reasonably required by the Maritime and Coastguard Agency.

Construction and operational noise

15.—(1) Unless otherwise approved in writing by the National Assembly, the undertaker must—

- (a) comply with British Standard 5228 (Noise and Vibration Control on Construction and Open Sites) Parts 1 and 2: 1997 and Part 4: 1992 in respect of all relevant activities carried out during the construction, maintenance or decommissioning of the authorised works; and
- (b) ensure that the maximum levels of noise to be generated by such activities does not exceed at the facade of any noise sensitive receptor—
 - (i) between 23.00 hours and 07.00 hours: a level of 50 dB LAeq, 8 hour nor an LAFmax level of 60 dB; and

(ii) between 07.00 hours and 23.00 hours: a level of 75 dB LAeq, 1 hour.

(2) Unless otherwise approved in writing by the National Assembly, the undertaker must ensure that the rating level of noise emissions generated by the operation of the wind turbines does not exceed 35dB LA90, when measured in accordance with the guidance contained in “The Assessment and Rating of Noise from Wind Farms” (ETSU-R-1997), in free field conditions at a point 1.2 metres above ground level at any noise sensitive receptor, at wind speeds of up to 10 metres per second measured at a height of 10 metres above the level of high water within the wind farm site.

(3) In this article—

“relevant activities” (“*gweithgareddau perthnasol*”) means any activities carried out in an area outside the jurisdiction of a local authority under Part III of the Control of Pollution Act 1974(2);

“noise sensitive receptor” (“*derbynnydd sy'n sensitif i sw n*”) means any existing habitable dwelling or any hospital, school or rest home.

Execution by Secretary of State of works in default

16. If, on the expiration of 30 days from the date when a notice under article 8(2)(a) or 10(1) is served upon the undertaker it has failed, without reasonable excuse, to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; and any expenditure incurred by the Secretary of State in so doing will be recoverable from the undertaker.

Offences

17. If the undertaker, without reasonable excuse, fails to—

- (a) comply with a direction given under article 9, 12(1) or (2) or 13;
- (b) comply with the requirements of article 12(3) or 15;
- (c) give notification as required by article 9; or
- (d) operate the wind turbines in accordance with article 14,

it will be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) 1974 c. 40.