
STATUTORY INSTRUMENTS

2011 No. 84

**TRANSPORT AND WORKS, ENGLAND
OFFSHORE INSTALLATIONS, ENGLAND
ELECTRICITY, ENGLAND**

The Lynn and Inner Dowsing Offshore
Wind Farms (Amendment) Order 2011

Made - - - - 17 January 2011

Coming into force in accordance with article 1

The Secretary of State for Energy and Climate Change (“the Secretary of State”) makes this Order in exercise of the powers conferred by sections 3 and 5 of, and paragraphs 2, 4 to 8, 15 and 17 of Schedule 1 to, the Transport and Works Act 1992⁽¹⁾ (“the 1992 Act”) and by article 2 of the Transport and Works (Descriptions of Works Interfering with Navigation) Order 1992⁽²⁾.

In accordance with section 6 of the 1992 Act the Secretary of State has received an application for an order under section 3 of that Act, that complies with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006⁽³⁾ (“the 2006 Rules”).

In accordance with section 13(1) of the 1992 Act the Secretary of State has determined to make an order under section 3 of that Act giving effect to the proposals comprised in the application. Accordingly the Secretary of State makes the following Order:

(1) 1992 c. 42. As amended by S.I. 1995/1541, S.I. 1998/2226, S.I. 2000/3199 and S.I. 2006/958, and the Planning Act 2008 (c. 29), section 36 and Schedule 2, paragraph 53.
(2) S.I. 1992/3230 as amended by S.I. 1997/2906.
(3) S.I. 2006/1466.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Lynn and Inner Dowsing Offshore Wind Farms (Amendment) Order 2010 and comes into force on the date on which the notice required by section 14(1)(b) of the Transport and Works Act 1992(4) is first published.

Interpretation

2.—(1) In this Order—

“authorised works” means the scheduled works and any other works authorised by this Order;

“LWFL” means Lincs Wind Farm Limited whose registered office is at No. 1 Waterfront Avenue, Edinburgh EH5 1SG or any person to whom the powers conferred by this Order are transferred in an agreement pursuant to article 16;

“the deposited plans” means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;

“the deposited sections” means the sections certified by the Secretary of State as the sections for the purposes of this Order;

“the limits of deviation” means the limits of deviation for the scheduled works shown on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” shall be construed accordingly;

“scheduled works” means the works specified in the Schedule to this Order or any part of them; and

“Trinity House” means the Corporation of Trinity House of Deptford Strond.

(2) All distances, directions and lengths stated in the description of the scheduled works are approximate, and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

(3) A reference to a co-ordinate in the description of the scheduled works is a reference to World Geodetic System 1984 datum.

Power to construct and maintain works

3.—(1) LWFL may construct and maintain the scheduled works.

(2) Subject to article 4 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) LWFL 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 and maintenance of the scheduled works;

(4) 1992 c. 42; section 14 was amended by regulation 2 of the Transport and Works (Assessment of Environmental Effects) Regulations 2006 (S.I. 2006/958).

- (b) buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- (c) such other works, apparatus (including cables), plant and machinery of whatever description as may be necessary or expedient.

(4) Without prejudice to paragraph (3), LWFL may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

Power to deviate

4.—(1) In constructing or maintaining any of the scheduled works, LWFL may—

- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and
- (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent not exceeding 2 metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

(2) In deviating from the levels of the scheduled works shown on the deposited sections under article 4(1)(b)(i), LWFL may construct the scheduled works so as to be positioned on the surface of the seabed but those works may not be constructed above the surface of the seabed.

Authorised works

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

5.—(1) No authorised works shall be constructed, altered, replaced, relaid or reconstructed except in accordance with the deposited plans and the deposited sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work has begun.

(2) If the authorised works are constructed, altered, replaced, relaid or reconstructed in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Secretary of State may by notice in writing require LWFL at its own expense to remove the authorised works or any part thereof and restore the site to its former condition; and if on the expiration of a period of 30 days beginning with the date on which the notice is served upon LWFL it shall have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice, or
- (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the authorised works or any part thereof and restore the site to its former condition;

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

Navigation aids on and navigational information about authorised works during construction

6. LWFL shall at or near the authorised works during the whole time of the construction, alteration, replacement, relaying or reconstruction thereof, 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.

Provision against danger to navigation

7. In case of injury to or destruction or decay of the authorised works or any part thereof, LWFL shall as soon as is reasonably practicable notify Trinity House and shall 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 authorised works abandoned or decayed

8.—(1) Where the authorised works are abandoned or suffered to fall into decay the Secretary of State may by notice in writing require LWFL at its own expense either to repair and restore the authorised works or any part thereof, or to remove the works and restore the site to its former condition, to such an extent and within such limits as may be specified in the notice.

(2) If, on the expiration of 30 days from the date when a notice under this article is served upon LWFL, it has failed to comply with the requirements of the notice, the Secretary of State may execute the work specified in the notice and any expenditure incurred by the Secretary of State in so doing shall be recoverable from LWFL.

Survey of authorised works

9.—(1) The Secretary of State may at any time, if the Secretary of State deems it expedient, order a survey and examination of the authorised works and any expenditure incurred by the Secretary of State in such a survey and examination shall be recoverable from LWFL.

(2) Except in the case of an emergency such surveys shall not be ordered more frequently than once a year, and before ordering such a survey the Secretary of State shall—

- (a) consult LWFL in order to establish what relevant survey information is already available; and
- (b) give LWFL an opportunity to carry out the survey itself.

Permanent lights and other navigational aids on authorised works

10. After the completion of the authorised works, LWFL shall around the perimeter of such works exhibit such lights, marks, sound signals and other navigational aids and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

Temporary exclusion zones for navigation

11.—(1) Subject to paragraph (5) any person who, without reasonable excuse during the construction, replacement, removal or decommissioning of any of the authorised works navigates a vessel within an area extending 500 metres from any part of those works shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) An exclusion zone shall not come into effect until—

- (a) 7 days after the publication of a notice to mariners specifying the location and extent of the exclusion zone, the date of its commencement and its intended duration; and
- (b) LWFL has taken such other steps as the Secretary of State may require to notify shipping of the proposed exclusion zone.

(3) The exclusion zone shall terminate on completion of the construction, replacement, removal or decommissioning (as the case may be) of the authorised works.

(4) As soon as reasonably practicable following the termination of an exclusion zone LWFL shall—

- (a) publish notice of the termination by means of a notice to mariners; and

- (b) take such other steps as the Secretary of State may require to notify shipping of the termination of the exclusion zone.
- (5) Paragraph (1) shall not apply to a person navigating a vessel for the purpose of, or in connection with, the construction, maintenance or operation of the authorised works.
- (6) In this article—
 - “exclusion zone” means an area in which navigation is excluded under paragraph (1);
 - “notice to mariners” includes any notice to mariners which may be issued to mariners by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities; and
 - “vessel” means a ship, boat, raft or water craft of any description and includes non-displacement craft, seaplanes and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily) and a hovercraft or other amphibious vehicle.

PART 2

MISCELLANEOUS AND GENERAL

Power to operate and use authorised works

- 12. LWFL may operate and use the authorised works as a system for transmitting electricity.

Certification of plans, etc.

- 13. LWFL shall, as soon as practicable after the making of this Order, submit copies of the deposited plans and the deposited sections to the Secretary of State for certification that they are true copies of the deposited plans and sections referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Obstructing execution of authorised works

- 14. A person who without reasonable excuse—
 - (a) obstructs another person from constructing or maintaining any of the authorised works, or
 - (b) interferes with equipment or materials used in the construction, operation or maintenance of any of the authorised works, or
 - (c) in any other way interferes with any of the authorised works or their operation;

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

Offences

- 15. If LWFL fails to—
 - (a) comply in any material respect with a direction given under article 6, 7 or 10,
 - (b) give notification as required by article 7, or
 - (c) comply in any material respect with article 8 or 10,

it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; but it shall be a defence to LWFL to show that all due diligence was used to secure compliance with the direction or to give the required notification.

Transfer of powers

16.—(1) LWFL may enter into, and carry into effect, agreements for the transfer to another person of all or any of the powers conferred on LWFL by this Order.

(2) The exercise of any power conferred by this Order by any other person in accordance with an agreement under paragraph (1) shall be subject to the same obligations and liabilities under this Order as would apply if that power were exercised by LWFL.

(3) Not later than 21 days before any such agreement comes into effect LWFL shall give written notice to the Secretary of State and to Trinity House stating the name and address of the person to whom the powers are being transferred and the date when the transfer is to take effect (which shall not be earlier than the date of receipt of the notice by whichever of the Secretary of State or Trinity House is the last to receive notice).

Transfer of powers conferred by Lynn Order

17.—(1) On the coming into force of this Order, all of the powers conferred by the Lynn Order in so far as they apply to the three Lynn turbines shall be transferred to LWFL.

(2) Upon the transfer of the powers as are mentioned in paragraph (1) to LWFL, all powers conferred by the Lynn Order in relation to the three Lynn turbines including the power conferred by article 19 (transfer of powers) of that Order shall cease to be exercisable under that Order.

(3) LWFL shall be subject to the same obligations and liabilities (if any) in relation to the exercise of any power transferred to it under paragraph (1) as if the exercise of such power had been carried out under the Lynn Order.

(4) Nothing in this article shall prejudice or affect the operation of any of the provisions of the Lynn Order in their application to the remaining works or affect anything already done under that Order in relation to the three Lynn turbines before the coming into force of this Order.

(5) Without prejudice to the generality of paragraph (1), the powers transferred to LWFL by that paragraph includes the power to construct, maintain, operate and use the three Lynn turbines and the power conferred by article 16 (transfer of powers) shall apply in relation to such power.

(6) In this article—

- (a) “the Lynn Order” means the Lynn Offshore Wind Farm Order 2003(5);
- (b) “the remaining works” means all works authorised to be constructed by the Lynn Order except for the three Lynn turbines;
- (c) “the three Lynn turbines” means the wind turbines numbered respectively 26, 27 and 28 in the table in paragraph 1(1)(a) of Schedule 1 to the Lynn Order.

Transfer of powers conferred by Inner Dowsing Order

18.—(1) On the coming into force of this Order, all of the powers conferred by the Inner Dowsing Order in so far as they apply to the three Inner Dowsing turbines shall be transferred to LWFL.

(2) Upon the transfer of the powers as are mentioned in paragraph (1) to LWFL, all powers conferred by the Inner Dowsing Order in relation to the three Inner Dowsing turbines including the power conferred by article 21 (transfer of powers) of that Order shall cease to be exercisable under that Order.

(3) LWFL shall be subject to the same obligations and liabilities (if any) in relation to the exercise of any power transferred to it under paragraph (1) as if the exercise of such power had been carried out under the Inner Dowsing Order.

(4) Nothing in this article shall prejudice or affect the operation of any of the provisions of the Inner Dowsing Order in their application to the remaining works or affect anything already done under that Order in relation to the three Inner Dowsing turbines before the coming into force of this Order.

(5) Without prejudice to the generality of paragraph (1), the powers transferred to LWFL by that paragraph includes the power to construct, maintain, operate and use the three Inner Dowsing turbines and the power conferred by article 16 (transfer of powers) shall apply in relation to such power.

(6) In this article—

- (a) “the Inner Dowsing Order” means the Inner Dowsing Offshore Wind Farm Order 2003(6);
- (b) “the remaining works” means all works authorised to be constructed by the Inner Dowsing Order except for the three Inner Dowsing turbines;
- (c) “the three Inner Dowsing turbines” means the wind turbines numbered respectively T21, T22 and T23 in the table in paragraph 1(a) of the Schedule to the Inner Dowsing Order.

For Protection of Environment Agency

19.—(1) The following provisions shall, unless otherwise agreed in writing between the Environment Agency (in this article referred to as “the Agency”) and LWFL have effect.

(2) In this article—

“accumulation” means any accumulation of silt or other material;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal; and “construct” and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or shore of the sea or other structure of whatever nature, including the Lincshore sea defences, under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991(7);

“outfall” means—

- (a) any existing land drainage outfall for which the Agency is responsible; or
- (b) any sewer, pipe or drain provided for groundwater, surface water or storm overflow sewerage; and

“specified work” means any permanent or temporary work or operation authorised by or under this Order (which includes for the avoidance of doubt, any dredging and any exploratory geotechnical investigations that may be undertaken).

- (a) (3) (a) If, during the construction of a specified work or within 10 years after the completion of such work there is an accumulation or erosion or alteration of the tidal flow or littoral drift wholly or partly caused by such work which causes damage, or the reasonable expectation of damage within 2 years, LWFL shall, if so required by the Agency before or within the period of 10 years after such completion, and subject to obtaining any necessary consents, remedy so much of such accumulation, erosion, alteration of tidal flow or littoral drift as is caused by such work, in the manner specified in sub-paragraph (e) and, if it refuses or fails so to do, the Agency may itself cause work to be done and may recover the reasonable cost thereof from LWFL.
- (b) Should any such accumulation or erosion or alteration of the tidal flow or littoral drift arise during the said construction or the said period of 10 years and be remedied in accordance

(6) S.I. 2003/2831.

(7) 1991 c. 57.

- with sub-paragraph (a), any recurrence of such accumulation or erosion or alteration of the tidal flow or littoral drift shall, subject to sub-paragraph (c), from time to time be so remedied by LWFL during the said period of 10 years and at any time thereafter.
- (c) LWFL's obligation under this paragraph shall cease in the event that following the remedying of any such accumulation or erosion or alteration of the tidal flow or littoral drift a period of 10 years elapses without any further such accumulation or erosion or alteration of the tidal flow or littoral drift unless the specified works are decommissioned and removed before the end of that 10 year period, in which case LWFL's obligation under this paragraph shall cease upon the expiration of 2 years after such removal.
- (d) In this paragraph, "damage" means any damage to or any adverse effect whatsoever upon the structure or operation of any outfall, flood or sea defences or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991.
- (e) For the purposes of this paragraph—
- (i) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may be reasonably required by the Agency; and
 - (ii) in the case of erosion or alteration of tidal flow or littoral drift, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably required by the Agency provided always that the Agency will not require a remedy which results in betterment upon the average levels of accumulation, erosion, tidal flow or littoral drift for 2 years prior to the Agency's requirement.
- (f) To the extent that damage would have been caused in any event by factors other than the construction of a specified work LWFL shall not be liable to remedy such accumulation or erosion or alteration of tidal flow or littoral drift.
- (4) For the purposes of paragraph (3)(a) the date of completion of a specified work shall be the date on which it is brought into use.
- (a) (5) (a) Save for LWFL's liability to the Agency in relation to remedying damage caused by accumulation or erosion or alteration of the tidal flow or littoral drift as set out in the provisions of paragraph (3) (which provisions are, for the avoidance of any doubt, exhaustive as to the Agency's remedies in that regard) and subject always to sub-paragraph (b) LWFL shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss which may be made or taken against, or recovered from or reasonably incurred by, the Agency to the extent they are caused by the construction of any of the specified works or by reason of their maintenance, repair, alteration, renewal, removal, existence or use or any act or omission of LWFL, its contractors, agents, workmen, or servants whilst engaged upon any such work.
- (b) The Agency shall—
- (i) give to LWFL notice of any such claim, demand, proceedings, costs, damages or expenses or loss as soon as is reasonably practicable;
 - (ii) consult LWFL in relation to the conduct of the defence and settlement or compromise thereof;
 - (iii) in the event that it is agreed that LWFL shall assume the control and conduct of the defence and settlement or compromise thereof give such reasonable assistance as may reasonably be required by LWFL in the defence, settlement or compromise thereof; and
 - (iv) not in any event make a settlement or compromise thereof without the agreement of LWFL which agreement shall not be unreasonably withheld.

(6) Except as otherwise provided by this article nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdiction and obligations conferred, arising or imposed under the Land Drainage Act 1991⁽⁸⁾, the Salmon and Freshwater Fisheries Act 1975⁽⁹⁾, the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the Agency or any existing approvals or consents granted by the Agency to LWFL under any enactment, byelaw or regulation.

- (a) (7) (a) Any dispute or difference between LWFL and the Agency arising under, out of, or in connection with this article shall be referred to and settled by a single arbitrator appointed by agreement between the parties on reference to him by either party, after notice in writing to the other, or, in default of agreement, by the President or Vice President of the Institution of Civil Engineers.
- (b) Without fettering the said right to commence arbitration proceedings LWFL and the Agency will attempt to settle any dispute or difference by mediation.

Crown rights

20.—(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 LWFL to take, use, enter upon or in any manner interfere with, any land, hereditaments or rights of whatsoever description (including any part of the shore or bed of the sea or any other river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners; or
- (b) 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) A consent under paragraph (1) may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

Signed by authority of the Secretary of State for Energy and Climate Change

Giles Scott
Head, Development Consents and Planning
Reform,
Department of Energy and Climate Change

17 January 2011

⁽⁸⁾ 1991 c. 59.
⁽⁹⁾ 1975 c. 51.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Article 3

SCHEDULED WORKS

The works which LWFL is authorised to construct and maintain by article 3 are the following works on the bed of the North Sea adjoining the coast at Ingoldmells and at Skegness both in the district of East Lindsey, County of Lincolnshire—

Work No. 1 — An inter-array cable buried mostly under the seabed commencing at a point at 53°12.7780N 0°27.6105E, from there proceeding in a southerly direction for a distance of 574m to a point at 53°12.4883N 0°27.6097E, from there proceeding in a southerly direction for a distance of 575m to a point at 53°12.1981N 0°27.6107E, from there proceeding in a generally easterly direction for a distance of 953m and terminating at a point at 53°12.2614N 0°28.4101E.

Work No. 2 — An inter-array cable buried mostly under the seabed commencing at a point at 53°7.7262N 0°28.7537E, from there proceeding in a northerly direction for a distance of 535m to a point at 53°7.9956N 0°28.7379E, from there proceeding in a northerly direction for a distance of 536m to a point at 53°8.2655N 0°28.7212E, from there proceeding in a northerly direction for a distance of 384m to a point at 53°8.4501N 0°28.7352E, from there proceeding in a north easterly direction for a distance of 223m to a point at 53°8.5387N 0°28.8690E, from there proceeding in a northerly direction for a distance of 613m and terminating at a point at 53°8.8641N 0°28.8322E.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the construction and maintenance of cabling under the sea in relation to three specific wind turbines authorised to be constructed as part of the Inner Dowsing Wind Farm by the Inner Dowsing Offshore Wind Farm Order 2003 (S.I. 2003/2831); and in relation to three specific wind turbines authorised to be constructed as part of the Lynn Offshore Wind Farm by the Lynn Offshore Wind Farm Order 2003 (S.I. 2003/2829). The Order also transfers to LWFL the powers to construct and maintain the six wind turbines.

A copy of the deposited plans and the deposited sections may be inspected free of charge during working hours at the offices of Lincs Wind Farm Limited, c/o Centrica Renewables, Millstream East, Maidenhead Road, Windsor, Berkshire SL4 5GD.