
STATUTORY INSTRUMENTS

2023 No. 1033

The Awel y Môr Offshore Wind Farm Order 2023

PART 2

Principal Powers

Development consent etc. granted by the Order

- 3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—
- (a) development consent for the authorised development; and
 - (b) consent for the ancillary works; to be carried out within the Order limits.

(2) Subject to the requirements, the offshore works must be constructed within the Order limits seaward of MLWS and the onshore works must be constructed within the Order limits landward of MLWS.

(3) No provision of this Order relieves the undertaker of any requirement to obtain any further licence under Part 4 of the 2009 Act (marine licensing) before commencement of the authorised development, or to comply with the conditions of any marine licence(s), and nothing in this Order in any way limits the enforcement powers in respect of a marine licence(s) under Part 4 of the 2009 Act.

(4) In the event of any inconsistency between the provisions of this Order and a marine licence, then the terms of the marine licence will take precedence.

Operation of generating station

4.—(1) The undertaker is authorised to use and operate the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any legislation that may be required from time to time to authorise the operation of the authorised development.

Power to maintain the authorised development

5.—(1) Subject to paragraph (2), the undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain any further licence under Part 4 (marine licensing) of the 2009 Act for the offshore works.

Benefit of the Order

6.—(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (the “transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (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 provisions of this Order and such related statutory rights as may be so agreed except where paragraph (8) applies, in which case the consent of the Secretary of State is not required.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, will include references to the transferee or lessee.

(4) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application.

(5) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (1).

- (a) the benefit transferred or granted (“the transferred benefit”) includes any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(6) The consent of the Secretary of State is required for the exercise of powers under paragraph (2) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply, etc.) of the 1989 Act; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(7) Prior to any transfer or grant under this article taking effect, whether or not the consent of the Secretary of State is required, the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to the exercise of powers in their area, to the relevant planning authority.

(8) The notice required under paragraphs (4) and (7) must—

- (a) state—
 - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
 - (ii) subject to paragraph (9), the date on which the transfer will take effect;

- (iii) the provisions to be transferred or granted;
 - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (5)(c), will apply to the person exercising the powers transferred or granted; and
 - (v) where paragraph (6) does not apply, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) be accompanied by—
- (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
 - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(9) The date specified under paragraph (8)(a)(ii) in respect of a notice served in respect of paragraph (7) must not be earlier than the expiry of fourteen days from the date of the receipt of the notice.

(10) The notice given under paragraph (7) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

Application and modification of legislative provisions

7. The following enactments do not apply in relation to the construction of any work or the carrying out of any operation for the purpose of or in connection with, the construction of the authorised development or any maintenance of any part of the authorised development—

- (a) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991(1);
- (b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(2);
- (c) sections 23 (prohibition on obstructions etc. in watercourses) and 30 (authorisation of drainage works in connection with a ditch) of the Land Drainage Act 1991(3); and
- (d) the provisions of the Neighbourhood Planning Act 2017(4) in so far as they relate to the temporary possession of land under articles 27 (temporary use of land for carrying out the authorised development) and 28 (temporary use of land for maintaining the authorised development) of this Order.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(5) in relation to a

(1) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraph 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraph 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(2) 1991 c. 59. Section 66 was amended by paragraph 38 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and section 86(3) of the Water Act 2014 (c. 21).

(3) 1991 c. 59. Section 23 was amended by section 120(1) of and the paragraph 192 of Schedule 22 to, the Environment Act 1995 and section 31 of, and paragraphs 25 and 32 of Schedule 2 to, the Flood and Water Management Act 2010 (c. 29).

(4) 2017 c. 20.

(5) 1990 c. 43. Amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are other amendments not relevant to this Order.

nuisance falling within paragraphs (d), (fb), (g) and (ga) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may 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 sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974⁽⁶⁾;
- (b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site) of the Control of Pollution Act 1974⁽⁷⁾ 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.

(6) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995. There are other amendments to the 1974 Act which are not relevant to the Order.

(7) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 3 to the Environmental Protection Act 1990 and Paragraph 1 of Schedule 24 to the Environment Act 1995.