
WELSH STATUTORY INSTRUMENTS

2004 No. 3054 (W.263)

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

The Scarweather Sands Offshore Wind Farm Order 2004

Made - - - - 16 November 2004

Coming into force - - 19 November 2004

WHEREAS an application has been made to the National Assembly for Wales (“the National Assembly”), in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000(1) made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992(2) (“the 1992 Act”), for an Order under section 3 of the 1992 Act;

AND whereas the National Assembly has caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act;

AND whereas the National Assembly, having considered the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change to the proposals;

AND whereas notice of the National Assembly’s determination was published in the London Gazette on 2 November 2004;

NOW THEREFORE, the National Assembly, in exercise of the powers conferred on the Secretary of State by sections 3 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 15 to 17 of Schedule 1 to, the 1992 Act, and which are now exercisable by the National Assembly(3), and of all other powers enabling it in that behalf, hereby makes the following Order:

(1) S.I. 2000/2190.

(2) 1992 c. 42.

(3) See The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and The National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) (W.5).

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Scarweather Sands Offshore Wind Farm Order 2004 and comes into force on 19 November 2004.

Interpretation

2.—(1) In this Order —

“the 1961 Act” (“*Deddf 1961*”) means the Land Compensation Act 1961(4);

“the 1965 Act” (“*Deddf 1965*”) means the Compulsory Purchase Act 1965(5);

“the Applications Rules” (“*y Rheolau Ceisiadau*”) means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000(6); and references in this Order to numbered rules are to the rules bearing those numbers in the Applications Rules;

“authorised works” (“*y gweithfeydd awdurdodedig*”) means the scheduled works, the works and facilities described in article 3(4) and, except in articles 8 to 17, the existing mast;

“the book of reference” (“*y cyfeirlyfr*”) means the book of reference certified by the National Assembly as the book of reference for the purposes of this Order;

“carriageway” (“*cerbyttfordd*”), “footpath” (“*llwybr troed*”), “highway” (“*priffordd*”) and “highway authority” (“*awdurdod priffyrdd*”) have the same meaning as in the Highways Act 1980(7);

“electric line” (“*llinell drydan*”) has the meaning given by section 64(1) of the Electricity Act 1989(8);

“enactment” (“*deddfiad*”) includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the existing electricity pylon” (“*y peilon trydan presennol*”) means the electricity pylon at reference point 278906E, 185778N and includes any apparatus which is ancillary to that pylon;

“the existing mast” (“*y mast presennol*”) means the existing anemometry mast on the bed of Swansea Bay adjoining the coast at Port Talbot in the County Borough of Neath Port Talbot, situated at reference point 271709E, 176723N;

“the inter-turbine cables” (“*y ceblau rhyngdyrbinau*”) means the cables described in paragraph 1(b) of Schedule 1 to this Order;

“the land plans” (“*planiau'r tir*”) means the plans certified by the National Assembly as the land plans for the purposes of this Order; and references to land shown on those plans are references to land so shown in pursuance of rule 12(5);

“the level of high water” (“*lefel y dŵr uchel*”) means the level of mean high water springs;

“the limits of deviation” (“*terfynau'r gwyro*”), in relation to a work, means the limits of deviation related to that work which are shown on the works plans;

(4) 1961 c. 33.
(5) 1965 c. 56.
(6) S.I. 2000/2190.
(7) 1980 c. 66.
(8) 1989 c. 29.

“maintain” (“*cynnal a chadw*”) includes inspect, maintain, repair, adjust, alter, remove, reconstruct and replace; and “maintenance” shall be construed accordingly;

“the marine feeder cables” (“*y ceblau cludo i'r môr*”) means the cables comprised in Work No. 2;

“owner” (“*perchennog*”), in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;

“reference point” (“*cyfeirbwynt*”) means the Ordnance Survey National Grid reference point;

“the scheduled works” (“*y gweithfeydd a restrwyd*”) means the works specified in Schedule 1 to this Order or any part of them;

“the sections” (“*y trawsluniau*”) means the sections certified by the National Assembly as the sections for the purposes of this Order;

“street” (“*stryd*”) includes part of a street;

“street authority” (“*awdurdod stryd*”), in relation to a street, has the same meaning as in Part III of the Street Works Act;

“the Street Works Act” (“*y Ddeddf Gwaith Stryd*”) means the New Roads and Street Works Act 1991(9);

“tidal work” (“*gwaith llanw'r môr*”) means so much of any authorised work as is on, under or over tidal waters;

“the Tribunal” (“*y Tribiwnlys*”) means the Lands Tribunal;

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

“the undertaker” (“*yr ymgymwrwr*”) means Scarweather Sands Limited or any person to whom the powers conferred by this Order are transferred in an agreement pursuant to article 37;

“vessel” (“*cwch*”) 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;

“the wind farm site” (“*safle'r fferm wynt*”) means an area shown on the works plans within the limits of deviation for the inter-turbine cables;

“wind turbine” (“*tyrbin gwynt*”) means a wind turbine generator described in paragraph 1(a) of Schedule 1 to this Order; and

“the works plans” (“*planiau'r gweithfeydd*”) means the plans certified by the National Assembly as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in or on land or in the air space over its surface.

(3) All directions, distances, lengths and points stated in any description of works, powers or lands are to be construed as if the words “or thereabouts” were inserted after each such direction, distance, length and point.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) References in this Order to points identified by letters are to be construed as references to the points so lettered on the works plans.

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(10).

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
- (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.

(10) 1985 c. 48.

(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(11);

“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.

PART III

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

18. The undertaker may acquire compulsorily so much of the land shown numbered 4 on the land plans and described in the book of reference as may be required for the purposes of Work No. 3 and it may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its electricity undertaking.

Application of Part I of the Compulsory Purchase Act 1965

19.—(1) Part I of the 1965 Act, insofar as not modified by, or inconsistent with, the provisions of this Order, applies to the acquisition of land under this Order as—

- (a) it applies to a compulsory purchase to which the Acquisition of Land Act 1981(12) applies; and
 - (b) if this Order were a compulsory purchase order under that Act.
- (2) Part I of the 1965 Act, as so applied, has effect as if—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provisions as to the giving of bonds) were omitted; and

(11) 1974 c. 40.

(12) 1981 c. 67.

- (b) in section 11(1) (which confers powers to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice), for the reference to 14 days' notice, there were substituted in—
- (i) a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month; or
 - (ii) any other case, a reference to notice of 3 months.

Power to acquire new rights

20.—(1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in article 18 as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) The undertaker may compulsorily acquire such easements or other rights over the land shown numbered 1 to 3, 5 to 9 and 11 on the land plans and described in the book of reference (“the relevant land”) as it may consider necessary for and in connection with the construction, use, operation and maintenance of Works No. 2, 2A, 4 and 5.

(3) The undertaker may compulsorily acquire such easements or rights to use the streets shown numbered 12 to 16 on the land plans and described in the book of reference as it may consider necessary in order to obtain access for the purpose of constructing, using, operating and maintaining the authorised works.

(4) The easements or rights referred to in paragraph (3) are rights to use the streets referred to in that paragraph in common with any other persons entitled to use the streets; and nothing in this article is to be taken as conferring a right to interfere with the use of the streets by other persons.

(5) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 3 to this Order), where the undertaker acquires a right over land under this article, the undertaker is not required to acquire a greater interest in it.

(6) Schedule 3 to this Order has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

Temporary possession of land

Temporary use of land for construction of works

21.—(1) The undertaker may, in connection with the carrying out of the authorised works—

- (a) enter upon, and take temporary possession of, the land shown numbered 4 on the land plans and described in the book of reference as may be required in connection with the construction of the authorised works;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 28 days before entering upon, and taking temporary possession, of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the authorised works.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part I of the 1961 Act.

(7) Without prejudice to article 36, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to any land of which temporary possession is taken under paragraph (1), except that the undertaker is not precluded from acquiring new rights over any part of that land under article 21.

(9) Where the undertaker takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) In this article, "building" ("*adeilad*") includes structure or any other erection.

Compensation

Disregard of certain interests and improvements

22.—(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land under this Order, the Tribunal is not to take into account any—

- (a) interest in land; or
- (b) enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the Tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1), "relevant land" ("*tir perthnasol*") means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Extinction or suspension of private rights of way

23.—(1) Subject to paragraph (2), all private rights of way over land subject to compulsory acquisition under article 18 are extinguished—

- (a) as from the acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the entry on the land by the undertaker under section 11(1) of the 1965 Act, whichever is sooner.

(2) Paragraph (1) does not apply to any private rights of way over Heol Caer Bont.

(3) All private rights of way over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any 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.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990(13) (extinguishment of rights of statutory undertakers etc.).

Time limit for exercise of powers of acquisition

24.—(1) The powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 21 to enter upon and take temporary possession of land, cease at the end of the period of 5 years beginning on the day on which this Order comes into force.

(2) Paragraph (1) does not prevent the undertaker remaining in possession of land in accordance with article 21 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART IV

MISCELLANEOUS AND GENERAL

Power to operate and use works

25. The undertaker may operate and use the authorised works as a system for generating and transmitting electricity.

Dis-application of sections 36 and 37 of the Electricity Act 1989

26. The provisions of sections 36 and 37 of the Electricity Act 1989(14) do not apply in relation to the authorised works.

Obstruction and misuse of authorised works

27. Any person who without reasonable excuse—

- (a) obstructs another person from constructing or maintaining any of the authorised works under the powers conferred by this Order;
- (b) makes fast to any part of any tidal work; or
- (c) in any other way interferes with any of the authorised works or their operation,

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

Safety zones for navigation, trawling and anchoring

28.—(1) Subject to paragraphs (2) and (4), any person who, without reasonable excuse,—

- (a) during the construction, relaying, replacement, removal or decommissioning of any tidal works navigates a vessel within an area extending 500 metres from any part of that work (or such lesser area as may be published under paragraph (2));
- (b) following the laying of any of the inter-turbine cables trawls or anchors a vessel within the wind farm site and an area extending 200 metres outwards from that site;

(13) 1990 c. 8.

(14) 1989 c. 29.

- (c) following the laying of any of the marine feeder cables anchors a vessel within an area extending 200 metres from any part of that cable; or
- (d) following completion of construction of any of the relevant structures navigates a vessel within an operational safety zone,

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

(2) A safety zone will not come into effect until —

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

(3) As soon as reasonably practicable following the termination of a safety zone (other than by reason of paragraph (5)), the undertaker must—

- (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 a safety zone.

(4) Paragraph (1) does not apply to a person navigating or anchoring a vessel for the purpose of, or in connection with, the construction, maintenance or operation of the tidal works.

(5) Paragraph (1)(b), (c) and (d) ceases to have effect if and to the extent that the activities specified in any of those provisions, within the areas so specified, are prohibited under a relevant enactment.

(6) In this article—

“the construction safety zone” (“*y parth diogelwch wrth adeiladu*”) means an area in which navigation is excluded under paragraph (1)(a);

“operational safety zone” (“*parth diogelwch wrth weithredu*”) means an area extending 5 metres from any part of a relevant structure (including scour protection around that structure) or such larger distance not exceeding 50 metres as may be determined by the undertaker following a risk assessment and consultation with the Maritime and Coast Guard Agency and the Royal Yachting Association;

“relevant enactment” (“*deddfiad perthnasol*”) means any provision of a public general Act, or of any subordinate legislation made under a public general Act, which is brought into force after the making of this Order;

“relevant structure” (“*strwythur berthnasol*”) means a wind turbine or any of the anemometry masts;

“safety zone” (“*parth diogelwch*”) means any of the areas in which activities are excluded under paragraph (1);

“trawl” (“*treillio*”) means any fishing activity which involves dragging a net or line or other apparatus along the seabed.

Certain land to be treated as operational land

29. Planning permission which is deemed by a direction under section 90(2A) of the Town and Country Planning Act 1990(15) to be granted in relation to works authorised by this Order will be

treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

Statutory undertakers, etc.

30. The provisions of Schedule 4 to this Order have effect.

For protection of Environment Agency

31. The provisions of Schedule 5 to this Order have effect.

For protection of Network Rail

32. The provisions of Schedule 6 to this Order have effect.

Compensation for fishermen

33.—(1) If a relevant person can demonstrate to the reasonable satisfaction of the undertaker that the relevant person has suffered, or will suffer, loss as a result of being unable to fish within the relevant area following commencement of construction of Work No. 1 in consequence of the exercise of the powers of this Order, the undertaker must pay the relevant person reasonable compensation for that loss.

(2) Any such claim must be made no earlier than the commencement of construction of Work No. 1 and no later than 2 years after its completion; and any dispute as to the liability for, or amount of compensation, is to be referred to arbitration in accordance with article 39 of the Order.

(3) No person is entitled to compensation under this provision if convicted of an offence under article 28(1) by virtue of trawling in the relevant area; and, if any person is convicted of such an offence following payment of compensation under this article, such compensation may be recovered by the undertaker from that person.

(4) For the purpose of determining whether or not a person is a relevant person, and the extent of any person's loss for the purpose of paragraph (1), no account is to be taken of any activity unless it was undertaken in compliance with any applicable enactment or rule of law; and, in particular, no account is to be taken of any fish taken unless it has been included in returns submitted to the South Wales Sea Fisheries Committee under byelaws made under section 5 of the Sea Fisheries Regulation Act 1966⁽¹⁶⁾ and, where relevant, in declarations submitted under article 8 of Council Regulation (EEC) No. 2847/93⁽¹⁷⁾.

(5) In this article—

“relevant person” (*“person perthnasol”*) means the owner of a vessel who has been fishing with that vessel on a regular basis, in the course of his business, within the relevant area, in each of the five years immediately preceding commencement of construction of Work No. 1; and

“the relevant area” (*“yr ardal berthnasol”*) means the wind farm site and additional area referred to in article 28(1)(b).

Certification of plans, etc.

34. The undertaker must, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections and the works and land plans to the National Assembly for certification that they are true copies, respectively, of the book of reference, sections and the works

⁽¹⁶⁾ 1966 c. 38.

⁽¹⁷⁾ O.J. No. L261, 20.10.93 p.1.

and land plans referred to in this Order; and a document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

35.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(18) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise in—

- (a) the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) any other case, the person's last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of "owner" or, as the case may be, "occupier" of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

36. Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Transfer of powers

37.—(1) The undertaker may, with the consent of the National Assembly, enter into, and carry into effect, agreements for the transfer to another person of all or any of the powers conferred on the undertaker by this Order.

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

(3) Not later than 21 days before any such agreement comes into effect which provides for the transfer to another person of powers relating to any tidal works, the undertaker must 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.

Crown rights

38.—(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 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 river, channel, creek, bay or estuary) belonging to—

- (a) 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) 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 or upon such terms as may be considered necessary or appropriate.

Arbitration

39. Any difference under any provision of this Order (other than a difference which falls to be determined by the Tribunal) 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by the Minister for Finance, Local Government and Public Services on behalf of the National Assembly for Wales

16 November 2004

Sue Essex

SCHEDULES

SCHEDULE 1

Article 2(1)

THE SCHEDULED WORKS

1. The works which the undertaker is authorised to construct and maintain by article 3(1) are the following works on the bed of Swansea Bay adjoining the coast between Porthcawl in the County Borough of Bridgend and Port Talbot in the County Borough of Neath Port Talbot and on land within the County Borough of Neath Port Talbot—

Work No. 1 — A wind energy electrical generating station consisting of—

- (a) up to 30 wind turbines generators fixed to the seabed by one or more piles or gravity foundations and extending to a height of up to 130.5 metres above the level of high water, fitted with rotating blades and situated at the following locations—

<i>Wind turbine number</i>	<i>Reference point Easting</i>	<i>Reference point Northing</i>
1	269103	177986
2	269219	177481
3	269361	176982
4	269828	178465
5	269928	177953
6	270057	177448
7	270214	176951
8	270569	178920
9	270651	178407
10	270763	177901
11	270907	177402
12	271081	176912
13	271368	178982
14	271440	178540
15	271537	178103
16	271660	177672
17	271808	177250
18	271980	176836
19	272167	179040
20	272251	178566

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

<i>Wind turbine number</i>	<i>Reference point Easting</i>	<i>Reference point Northing</i>
21	272367	178099
22	272516	177641
23	272696	177195
24	272907	176762
25	272657	178920
26	273059	178614
27	273184	178160
28	273344	177716
29	273537	177286
30	273763	176872

(b) a network of cables connecting the wind turbines to each other.

Work No. 2 — A connection between Work No. 1 and Work No. 2A consisting of up to four marine feeder cables along routes commencing by connections with one or more of the wind turbines, then proceeding in a north-easterly direction for 7.22 kilometres until they reach the shore and terminating by a connection with Work No. 2A.

Work No. 2A — An extension of the cables comprised in Work No. 2 buried underground, commencing in a junction box at reference point 277406E, 184576N, extending for 121 metres in an easterly direction and terminating in Work No. 3.

Work No. 3 — An electrical substation situated at 277527E, 184608N.

Work No. 4 — An onshore cable connection with the electrical grid consisting of two electric lines, commencing at Work No. 3 and carried overhead in a north-easterly direction to reference points 278758E, 185469N and 278784E, 185392N, then proceeding underground across the railway sidings and Swansea to London railway and terminating by a connection with the existing electricity pylon.

Work No. 5 — A new road providing a construction and maintenance access between Work No. 3 and the road known as the harbour road.

2. In this Schedule, references to the locations of a wind turbine or an electrical substation are references to the centre point of that wind turbine or substation as shown on the works plans.

SCHEDULE 2

Article 6(1)

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
County Borough of Neath Port Talbot	Heol Caer Bont and Footpath No. 92	Between points B and F
County Borough of Neath Port Talbot	Heol Caer Bont	Between points A and B

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
County Borough of Neath Port Talbot	Footpath No. 93	Between points C and D
County Borough of Neath Port Talbot	Private road in Port Talbot Steel Works	Between points G and H

SCHEDULE 3

Article 20(6)

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973⁽¹⁹⁾ has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4, for the words—

- (a) “land is acquired or taken” there is substituted the words “a right over land is purchased”; and
- (b) “acquired or taken from him” there is substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5, for the—

- (a) word “part” in paragraphs (a) and (b) there is substituted the words “a right over land consisting”;
- (b) word “severance” there is substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) words “part proposed” there is substituted the words “right proposed”; and
- (d) words “part is” there is substituted the words “right is”.

Adaptation of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to the—

⁽¹⁹⁾ 1973 c. 26.

- (a) right acquired or to be acquired; or
- (b) land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part I of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation), there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Order regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (which relates to cases in which a vendor cannot be required to sell part only of a building or garden), there is substituted the following—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (“the Tribunal”); and
- (b) before the Tribunal has determined that question the person satisfies the Tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and, where that land consists of—
 - (i) a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Scarweather Sands Offshore Wind Farm Order 2004 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the Tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where, in consequence of a determination of the Tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which will be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act will be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (interests omitted from purchase) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 4

Article 30

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc. on land acquired

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers, etc. and power of statutory undertakers, etc. to remove or re-site apparatus) applies in relation to any land acquired or appropriated by the undertaker under this Order or over which the undertaker has acquired rights under article 20 of this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State or, in relation to water or sewerage undertakers, to the National Assembly.

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus will be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the

removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is the—

- (a) owner or occupier of premises the drains of which communicated with that sewer; or
- (b) owner of a private sewer which communicated with that sewer,

will be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making that person's drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which Part III of the Street Works Act applies.

(6) In this paragraph—

“the 1990 Act” (“*Deddf 1990*”) means the Town and Country Planning Act 1990;

“public communications provider” (“*darparwr cyfathrebu cyhoeddus*”) has the same meaning as in section 151(1) of the Communications Act 2003⁽²⁰⁾; and

“public utility undertakers” (“*ymgymerwyr cyfleusterau cyhoeddus*”) has the same meaning as in the Highways Act 1980⁽²¹⁾.

2. The powers conferred by this Order do not extend to authorising any acquisition of, or the making of a connection to, the existing electricity pylon without the consent of the licensed electricity undertaker in whom the pylon is vested from time to time.

SCHEDULE 5

Article 31

FOR PROTECTION OF ENVIRONMENT AGENCY

1.—(1) For the protection of the Environment Agency (in this Schedule referred to as “the Agency”), the following provisions have effect unless otherwise agreed in writing between the undertaker and the Agency.

(2) Before carrying out any works under the powers of this Order involving the erection or raising of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991⁽²²⁾ or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow of any such watercourse in, under or through any land held for the purposes of or in connection with the authorised works, the undertaker must furnish to the Agency proper and sufficient plans thereof for the approval of the Agency and must not carry out the said works until the said plans have been approved in writing by the Agency.

(3) The approval of plans furnished under paragraph (2) is not to be unreasonably withheld and if, within two months of such plans being supplied to the Agency, the Agency does not indicate in writing its disapproval and the grounds of its disapproval, it will be deemed to have approved the plans as supplied.

⁽²⁰⁾ 2003 c. 21.

⁽²¹⁾ 1980 c. 66.

⁽²²⁾ 1991 c. 57.

(4) For the purposes of this paragraph, “plans” (“*planiau*”) includes sections, drawings, specifications, calculations and descriptions.

(5) Any culvert or any structure designed to contain or divert the flow of any watercourse being a culvert or structure situated within any land held by the undertaker for purposes of or in connection with the authorised works, whether constructed under the powers of this Order or in existence prior to the making hereof, must be maintained by the undertaker in good repair and condition and free from obstruction.

(6) Nothing in paragraph (5) has the effect of requiring the undertaker to carry out works of maintenance in respect of any culvert or structure which the Agency or any other person are liable to maintain.

(7) If any obstruction is erected or raised or any culvert is constructed, altered or replaced in contravention of this article, the undertaker must, upon receiving notice from the Agency, take such action as may be necessary to remedy the effect of the contravention to the Agency’s reasonable satisfaction and in default the Agency may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the undertaker as a debt from them to the Agency.

(8) Any difference arising between the undertaker and the Agency under this Schedule (other than a difference as to its meaning or construction) is to be determined by arbitration.

SCHEDULE 6

Article 32

FOR PROTECTION OF NETWORK RAIL

Introductory

1.—(1) The following provisions of this Schedule have effect unless otherwise agreed in writing between the undertaker and Network Rail.

(2) In this Schedule—

“construction” (“*adeiladu*”) includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” (“*y peiriannydd*”) means an engineer to be appointed by Network Rail for the purpose in question;

“plans” (“*planiau*”) includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“protective works” (“*gweithfeydd diogelu*”) means works specified by the engineer under paragraph 5(1);

“Network Rail” means Network Rail Infrastructure Limited except that any reference to costs or losses incurred or suffered by Network Rail includes reference to costs or losses incurred or suffered by any relevant associated company;

“relevant associated company” (“*cwmni cysylltiedig perthnasol*”) means any company which is (within the meaning of section 736 of the Companies Act 1985⁽²³⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and, in any of these cases, holds or uses property for railway purposes;

(23) 1985 c. 6.

“railway property” (“*eiddo'r rheilffyrdd*”) means any railway belonging to Network Rail and any works, apparatus and equipment belonging to Network Rail or a relevant associated company connected with any such railway and includes any land held or used by Network Rail or a relevant associated company for the purposes of such railway or works, apparatus or equipment;

“relevant work” (“*gwaith perthnasol*”) means—

- (a) so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property; and
- (b) to the extent that it is not an authorised work, any protective work constructed by the undertaker.

Powers requiring Network Rail's consent

2.—(1) The undertaker must not, in the exercise of the compulsory powers conferred by or under this Order, acquire or use, or acquire new rights over, any railway property, unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not exercise the powers conferred by article 7 or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property, unless the exercise of such powers is with the consent of Network Rail.

(3) The undertaker must not in the exercise of the powers conferred by or under this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(4) The undertaker must not exercise the powers conferred by section 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 4 to this Order, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, such consent is not to be unreasonably withheld or delayed, but may be given subject to reasonable conditions.

Approval of plans

3.—(1) The undertaker must, before commencing construction of any relevant work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and must not commence construction of any relevant work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) is not to be unreasonably withheld or delayed, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not indicated disapproval of those plans and the grounds of his disapproval, the engineer will be deemed to have approved the plans as submitted.

Election by Network Rail to construct relevant work itself

4.—(1) If Network Rail reasonably considers that any relevant work or any part of a relevant work will or may affect the stability of railway property or the safe operation of traffic on its railways, it may elect to construct that relevant work or that part itself by giving notice to the undertaker specifying the work or part in question (“the specified work”) (“*y gweithfeydd a bennwyd*”) and stating that it desires to construct that work or part.

(2) Notice of an election under sub-paragraph (1) cannot be given after the end of the period of 56 days beginning with the date on which plans of the specified work have been supplied to Network Rail under paragraph 3.

(3) Following an election by Network Rail under sub-paragraph (1), the specified work must not be constructed except by Network Rail in accordance with sub-paragraph (4).

(4) If the undertaker confirms that it desires the specified work to be constructed, Network Rail must construct it (together with any adjoining part of any relevant work which the undertaker reasonably requires to be constructed in one operation with the specified work) on the undertaker's behalf—

- (a) with all reasonable dispatch;
- (b) to the reasonable satisfaction of the undertaker;
- (c) in accordance with the plans approved or settled under paragraph 3; and
- (d) under the supervision (where appropriate and if given) of the undertaker.

Protective works

5.—(1) When signifying approval of the plans of any relevant work, the engineer may specify any protective works (whether temporary or permanent) which the engineer reasonably considers should be carried out before the commencement of the relevant work to ensure the safety or stability of railway property and the continued safe and efficient operation of the railways of Network Rail or the services of operators using those railways; and such protective works may include any relocation of works, apparatus and equipment necessitated by the relevant work.

(2) Any such protective works must be constructed by Network Rail or by the undertaker, if Network Rail so desires, with all reasonable dispatch; and the undertaker must not commence the construction of the relevant work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

Construction of relevant work

6.—(1) Any relevant work must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or settled under paragraph 3;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on that railway and the use by passengers of railway property.

(2) If the undertaker does cause any damage to railway property in, or in consequence of, constructing any relevant work, it must make good such damage as soon as reasonably practicable.

Access

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to any relevant work during its construction; and

- (b) supply the engineer with all such information as the engineer may reasonably require with regard to any relevant work or the method of constructing it.

8. Network Rail must—

- (a) at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

Fencing

9. Where so required by the engineer the undertaker must, to the reasonable satisfaction of the engineer, fence off the relevant works, or take such other steps as the engineer may require to be taken for the purpose of separating the relevant works from railway property, whether on a temporary or permanent basis or both.

Maintenance of relevant work

10. The undertaker must secure that any relevant work, other than a work which belongs to Network Rail (or a relevant associated company), is maintained in such a state or condition as not to cause any adverse effect on the operation of railway property.

Alterations, etc. to railway property: repayment of additional expenses

11. If—

- (a) any alterations or additions, either permanent or temporary, to railway property are reasonably required during the construction of any relevant work, or during a period of 12 months commencing with the date of completion of that work, in consequence of the construction of that relevant work; and
- (b) Network Rail gives to the undertaker reasonable notice of its intention to carry out those alterations or additions, specifying the alterations or additions in question,

the undertaker must pay to Network Rail the reasonable cost of carrying out those alterations or additions.

Repayment of Network Rail's costs in connection with construction

12. The undertaker must pay to Network Rail a sum equivalent to any costs reasonably incurred by Network Rail in—

- (a) constructing any work on behalf of the undertaker as provided by paragraph 4 or in constructing any protective works as provided by paragraph 5; and
- (b) respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of any relevant work.

Additional costs of Network Rail in maintaining new works

13.—(1) As soon as reasonably practicable following completion of the relevant works, the undertaker must pay to Network Rail a capitalised sum representing the increase in cost which it may reasonably be expected to incur in maintaining any—

- (a) protective works constructed under paragraph 5;
- (b) alterations and additions carried out in accordance with paragraph 11.

(2) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving will be set off against any sum payable by the undertaker to Network Rail under sub-paragraph (1)(b).

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

Additional costs of Network Rail in maintaining existing railway property

14.—(1) Subject to sub-paragraph (2), the undertaker must pay to Network Rail a sum equivalent to any increase in costs which it reasonably incurs from time to time in maintaining existing railway property by reason of the proximity of the relevant works to the railway property in question.

(2) Sub-paragraph (1) does not apply to any work of maintenance unless—

- (a) Network Rail has given 56 days' notice to the undertaker of its intention to carry out that work, specifying the nature of work in question; and
- (b) the work of maintenance is carried out under existing powers.

General indemnity

15.—(1) The undertaker must pay to Network Rail a sum equivalent to any losses or costs not otherwise provided for in this Schedule which may be suffered or reasonably incurred by Network Rail by reason of—

- (a) the construction, maintenance or failure of the relevant works; or
- (b) any act or omission of the undertaker or of any person employed by it or of its contractors or agents whilst engaged upon the relevant works.

(2) The fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision will not (if it was done without negligence on the part of Network Rail or of any person employed by it or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

Compensation for train operators

16.—(1) The sums payable by the undertaker under paragraph 15 will include a sum equivalent to the relevant costs.

(2) Subject to the terms of any agreement between Network Rail and the relevant train operators regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (1) which relates to the relevant costs of that train operator.

(3) The obligation under sub-paragraph (1) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by the train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (2).

(4) In this paragraph—

“relevant costs” (“*costau perthnasol*”) means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, or maintenance or failure of the relevant works or any such act or omission as mentioned in paragraph 15(1); and

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“train operator” means any person who operates trains in accordance with a licence under section 8 of the Railways Act 1993⁽²⁴⁾ or an exemption under section 7 of that Act.

17. In the assessment of any sums payable under this Schedule, there is not to be taken into account any increase in the sums claimed that is attributable to any action taken, or any agreement entered into, by Network Rail if that action or agreement was not reasonably required and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

Saving for access agreements

18.—(1) Where, under this Schedule, Network Rail is required to give its consent or approval in respect of any matter, that consent or approval may be given subject to the condition that Network Rail complies with such of its obligations pursuant to any access agreement or any lease of a station or light maintenance depot as are relevant to that matter.

(2) In this paragraph, “access agreement” (“*cytundeb mynediad*”), “station” (“*gorsaf*”) and “light maintenance depot” (“*gorsaf cynnal a chadw ysgafn*”) have the meaning given by section 83 of the Railways Act 1993.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the construction and operation of an offshore wind farm and ancillary works on the bed of Swansea Bay off the coast between Porthcawl and Port Talbot and for the connection of those works via an onshore substation to the electricity distribution system.

A copy of the works plans, land plans, sections and of the book of reference prescribed by rule 12(1), (2), (3) and (5) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000, and certified in accordance with article 34 of this Order, may be inspected at the offices of Scarweather Sands Ltd., PO Box 824, Alexandra Gate, Rover Way, Cardiff, CF24 2SD.

(24) 1993 c. 43.