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WELSH STATUTORY INSTRUMENTS

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**2004 No. 3054**

**The Scarweather Sands Offshore Wind Farm Order 2004**

**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(1) 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;
- (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.

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(1) 1989 c. 29.

- (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(2) 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<sup>(3)</sup> and, where relevant, in declarations submitted under article 8 of Council Regulation (EEC) No. 2847/93<sup>(4)</sup>.

(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 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.

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(3) 1966 c. 38.

(4) O.J. No. L261, 20.10.93 p.1.

(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<sup>(5)</sup> 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

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(5) 1978 c. 30.

- (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.