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## STATUTORY INSTRUMENTS

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# 2014 No. 2441

## The Clocaenog Forest Wind Farm Order 2014

### PART 2

#### Principal powers

##### Development consent etc granted by the Order

3.—(1) Subject to the provisions of this Order, and to the Requirements in Part 3 of Schedule 1, the undertaker is granted—

- (a) development consent for the authorised development in Part 1 of Schedule 1, and
- (b) consent for the ancillary works in Part 2 of Schedule 1,

to be carried out within the Order limits.

(2) Subject to article 6 (power to deviate), the authorised development may only be constructed in the lines or situations shown on the works plan.

(3) Notwithstanding anything in this Order or shown on the works plan but without prejudice to the provisions of article 6 (power to deviate) the undertaker may construct—

- (a) Works No. 2A, 5A and 14A or Works No. 2B, 5B and 14B but may not construct both Works No. 2A, 5A and 14A and Works No. 2B, 5B and 14B under the powers conferred by this Order, and
- (b) Work No. 4A or 4B but may not construct more than one of those works under the powers conferred by this Order.

(4) Where the undertaker constructs—

- (a) either Work No. 4A or Work No. 4B as part of the authorised development, the undertaker must notify the relevant planning authority prior to the commencement of the authorised development which of those Works it intends to construct, and
- (b) either Works No. 5A and 14A or Works No. 5B and 14B as part of the authorised development, the undertaker must notify the relevant planning authority prior to the commencement of the authorised development which of those Works it intends to construct.

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##### Commencement Information

**II** Art. 3 in force at 2.10.2014, see [art. 1](#)

##### Procedure in relation to approvals etc under Requirements

4.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a Requirement, the following provisions apply, as if the Requirement was a condition to which planning permission was subject—

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- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a relevant planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989(1).

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**Commencement Information**

**I2** Art. 4 in force at 2.10.2014, see [art. 1](#)

### Maintenance of authorised project

5. Subject to other provisions of this Order or an agreement made under this Order, the undertaker may at any time and from time to time maintain the authorised project.

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**Commencement Information**

**I3** Art. 5 in force at 2.10.2014, see [art. 1](#)

### Power to deviate

6.—(1) Subject to paragraph (2), in constructing or maintaining the authorised development comprising works numbered 1 to 14B in Schedule 1 (authorised works), the undertaker may deviate laterally from the lines or situations shown on the works plan only to the extent of the limits of deviation shown on that plan.

(2) In constructing and maintaining Work No. 2A or 2B the undertaker may—

- (a) deviate from the commencement and termination points specified for each of the cable routes referred to in the first column of the Tables comprised within the description of those Works, and
- (b) within the limits of deviation, construct and maintain those cable routes between the commencement and termination points so shown in the Tables.

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**Commencement Information**

**I4** Art. 6 in force at 2.10.2014, see [art. 1](#)

### Operation of generating station

7.—(1) The undertaker is authorised to operate and use the authorised development for generating electricity.

(2) This article does not relieve the undertaker of any obligation to obtain any permit or licence or any other obligation under any other legislation that may be required to authorise the operation of a generating station.

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(1) Electricity Act 1989 (c.29) Section 6 has been amended by the Utilities Act 2000 (c.27), Energy Act 2004 (c.20), Climate Change Act 2008 (c.27), Energy Act 2011 (c.16), S.I. 2011/2704 and S.I. 2012/2400.

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**Commencement Information**

**I5** Art. 7 in force at 2.10.2014, see [art. 1](#)

**Benefit of Order**

**8.**—(1) Subject to the provisions of this article, the undertaker may with the 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, or
- (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.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

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**Commencement Information**

**I6** Art. 8 in force at 2.10.2014, see [art. 1](#)

**Defence to proceedings in respect of statutory nuisance**

**9.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(2) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the condition set out in paragraph (2) has been satisfied.

(2) The condition to be satisfied for the purposes of paragraph (1) is that the defendant shows that the nuisance relates to premises used by the undertaker for the purposes of or in connection with the construction of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(3).

(3) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), 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 project.

(4) The application to the authorised project of section 158 of the 2008 Act (nuisance: statutory authority) or any rule of law having similar effect does not extend to confer upon the undertaker the

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(2) [1990 c.43](#). There are amendments to this Act which are not relevant to this Order.

(3) [1974 c.40](#). Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act [1990 \(c.25\)](#). There are other amendments to the 1974 Act which are not relevant to this Order.

protection afforded by section 158 of the 2008 Act in respect of any nuisance arising from noise attributable to the use of the authorised project.

#### Commencement Information

**I7** Art. 9 in force at 2.10.2014, see [art. 1](#)

### Street works

**10.** The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it,
- (b) place apparatus in the street,
- (c) maintain apparatus in the street or change its position, and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), and (c).

#### Commencement Information

**I8** Art. 10 in force at 2.10.2014, see [art. 1](#)

### Stopping up of streets

**11.—(1)** Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 3 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the access plan, in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 3 (being a street to be stopped up for which a substitute is to be provided) may be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to article 30 (apparatus etc of statutory undertakers in stopped-up streets).

(5) This article does not relieve the undertaker from any obligation to obtain an order under sections 247 or 257 of the 1990 Act.

#### Commencement Information

**I9** Art. 11 in force at 2.10.2014, see [art. 1](#)

## Public rights of way

**12.**—(1) With effect from the stopping up of the footpath described in columns (1) and (2) of Schedule 3 (streets to be stopped up) all public rights of way over the relevant section of footpath are extinguished and public rights of way over the section of footpath described in column (4) of Schedule 3 (streets to be stopped up) to this Order are created.

(2) This article does not relieve the undertaker from any obligation to obtain an order under sections 247 or 257 of the 1990 Act.

### Commencement Information

**I10** Art. 12 in force at 2.10.2014, see [art. 1](#)

## Application of the 1991 Act

**13.**—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 of the 1991 Act (street works) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under the powers conferred by article 14 (temporary stopping up of streets) and the carrying out of streets works under article 10 (street works) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- (a) section 54 (advance notice of certain works),
- (b) section 55 (notice of starting date of works),
- (c) section 57 (notice of emergency works),
- (d) section 59 (general duty of street authority to co-ordinate works),
- (e) section 60 (general duty of undertakers to co-operate),
- (f) section 68 (facilities to be afforded to street authority),
- (g) section 69 (works likely to affect other apparatus in the street),
- (h) section 76 (liability for cost of temporary traffic regulation),
- (i) section 77 (liability for cost of use of alternative route),
- (j) section 82 (liability for damage or loss caused), and

all other such provisions as apply for the purposes of the provisions mentioned above.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) have effect, as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

### Commencement Information

**I11** Art. 13 in force at 2.10.2014, see [art. 1](#)

### Temporary stopping up of streets

**14.**—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street 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 for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the access plan, in column (3) of that Schedule.

(4) The undertaker may not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent may not be unreasonably withheld.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(b) that street authority will be deemed to have granted consent.

(7) This article does not relieve the undertaker from any obligation to obtain an order under the 1984 Act.

### Commencement Information

**I12** Art. 14 in force at 2.10.2014, see [art. 1](#)

### Access to works

**15.**—(1) The undertaker may, for the purposes of the construction or maintenance of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 (access to works) at or about the points marked “X” on the works plan,
- (b) with the approval of the relevant planning authority, such approval not to be unreasonably withheld, after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project, and

- (c) with the approval of the relevant planning authority, such approval not to be unreasonably withheld, after consultation with the highway authority, strengthen, improve, repair or reconstruct any street under the powers conferred by this Order.
- (2) If a relevant planning authority which receives an application for approval under paragraph (1) (b) or (c) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it will be deemed to have granted approval.

**Commencement Information**

**I13** Art. 15 in force at 2.10.2014, see [art. 1](#)

**Construction and maintenance of new or altered streets**

**16.**—(1) Any street to be constructed under this Order is to be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street, when completed to the reasonable satisfaction of the street authority, and unless otherwise agreed, is to be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), the court is to have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonably person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(5) Nothing in this article shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker may not by reason of any duty under that article to maintain a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or

- (b) have effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

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**Commencement Information**

**I14** Art. 16 in force at 2.10.2014, see [art. 1](#)

**Agreements with street authorities**

- 17.**—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street authorised by this Order;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) any stopping up, alteration or diversion of a street authorised by this Order; or
  - (d) the carrying out in the street of any of the works referred to in article 10(1) (street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

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**Commencement Information**

**I15** Art. 17 in force at 2.10.2014, see [art. 1](#)

**Discharge of water**

**18.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(4) (right to communicate with public sewers).

(3) The undertaker may not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but may not be unreasonably withheld.

- (4) The undertaker may not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval may not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.

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(4) [1991 c.56](#). Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 ([c.37](#)). There are other amendments to this section which are not relevant to this Order.



(5) The undertaker may not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(5).

(8) If a person who receives an application or consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application or consent under paragraph (3) or approval under paragraph (4)(a) that person will be deemed to have granted consent or given approval, as the case may be.

(9) This article does not relieve the undertaker of any requirement to obtain from the Natural Resources Wales any permit or licence under any other legislation that may be required to authorise the making of a connection to or, the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (2).

(10) In this article expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

#### Commencement Information

**I16** Art. 18 in force at 2.10.2014, see [art. 1](#)

#### Authority to survey and investigate the land

**19.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

- (a) survey or investigate the land,
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples,
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, and
- (d) 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.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 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, in order to enter onto land under this article, if so required when entering the land, produce written evidence of their authority to do so, and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

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(a) in land located within the highway boundary without the consent of the highway authority,  
or

(b) in a private street without the consent of the street authority,

but such consent may not be unreasonably withheld.

(5) The undertaker will compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority fails to notify the undertaker of a decision within 28 days of receiving an application or consent under paragraph (4)(a) or (4)(b), as the case may be, that authority will be deemed to have granted consent.

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**Commencement Information**

**I17** Art. 19 in force at 2.10.2014, see [art. 1](#)

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- [art. 36\(1A\)](#) inserted by [S.I. 2017/1197 art. 4\(2\)](#)