
WELSH STATUTORY INSTRUMENTS

2021 No. 1478

The Morlais Demonstration Zone Order 2021

PART 2

Works Provisions

Principal powers

Power to construct maintain, repower and decommission works

3.—(1) Subject to the provisions of this Order the undertaker may construct, maintain and decommission the authorised works.

(2) Subject to the provisions of this Order the undertaker may construct, maintain and decommission the tidal works or any parts thereof within the offshore Order limits.

(3) Subject to the provisions of this Order the undertaker may repower Work No. 1 or any parts thereof within the offshore Order limits.

(4) In constructing, maintaining, repowering and decommissioning the tidal works the documents in column 1 of Part 4 of Schedule 1 must be submitted to and approved in writing by the Welsh Ministers prior to the activity in column 2 occurring and such documents shall accord with any conditions relating to their content imposed on any marine licence for the relevant tidal works and shall not authorise any works outside the project parameters.

(5) The Welsh Ministers shall not approve any device deployment protocol pursuant to paragraph (4) in respect of the construction or repowering of surface emergent tidal devices and operational hubs in the array area without having first consulted with the Isle of Anglesey County Council and shall not approve any device deployment protocol, cable management plan, decommissioning programme or updated navigational risk assessment pursuant to paragraph (4) without having first consulted Trinity House and the Maritime and Coastguard Agency, and in each case the Welsh Ministers shall have regard to the responses of those consultees.

(6) The tidal works and any parts thereof must be constructed maintained, repowered and decommissioned (as appropriate) in accordance with the documents approved pursuant to paragraph (4) above save that such documents may be revised from time to time with the agreement of the Welsh Ministers.

(7) For the purposes of paragraphs (4) and (6) above any approval to an equivalent document pursuant to a condition of a marine licence granted for the tidal works or an agreed amendment to such a document shall be deemed to be approval of the Welsh Ministers.

(8) No tidal works may commence until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) of the 2004 Act has been submitted to the Secretary of State for approval.

Power to deviate

4. In constructing or maintaining the onshore works the undertaker —

- (a) may in relation to Works Nos 3 to 9 deviate laterally to any extent from the lines or situations shown on the onshore plans within the limits of deviation;
- (b) must not in relation to Works Nos. 7 and 8 construct any works within 1.6 metres of the surface of the ground; and
- (c) may in relation to each of the authorised works specified in column (3) of the table set out in Chapter 2 of Part 2 to Schedule 1 to this Order, construct those works in the land identified in relation to that particular works in columns (1) and (2) of that table.

Power to operate

5.—(1) The undertaker may operate and use the authorised works as a system for generating and transmitting electricity.

(2) In operating the tidal works the undertaker must comply with the documents set out in Part 4 of Schedule 1 as approved to the extent relevant to the operation and use of the tidal works.

Benefit of the Order

6.—(1) The undertaker may, with the consent of the Welsh Ministers, transfer to another person (“the transferee”) any or all of the benefit of the provision of this Order including its right to construct, maintain, operate, repower and decommission the authorised works (or any part of them) and such related statutory rights as may be agreed between the undertaker and the transferee.

(2) The undertaker may grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee the right to construct, maintain, operate, repower and decommission the tidal works (or any part of them) and such related statutory rights as may be so agreed.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) or (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the undertaker.

Streets

Application of the 1991 Act

Power to execute street works

7.—(1) The undertaker may, for the purposes of the construction operation and maintenance of the authorised works, enter upon so much of any of the streets specified in Schedule 3 to this Order as is within the onshore Order limits and may—

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

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) This article is subject to paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc) to this Order.

(5) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Temporary stopping up of streets

8.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction operation, maintenance and decommissioning of the authorised works, temporarily stop up alter or divert any street and may, for any reasonable time—

- (a) divert the traffic from the street; and
- (b) prevent persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street stopped up under the powers conferred by this article within the onshore Order limits as a temporary working site.

(3) Where the undertaker prevents persons from passing along the street, the undertaker must provide reasonable access to or from premises abutting or served by 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.

(4) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the streets set out 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 onshore plans, in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter or divert—

- (a) the streets set out as mentioned in paragraph (4) 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 including as to notice to be given.

(6) 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.

(7) If within 56 days of receiving and application for consent under paragraph (5)(b) a street authority fails to notify the undertaker of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

(8) This article is subject to paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc) to this Order.

Access to works

9. The undertaker may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 5 (access to works) at or about the point marked A on the onshore plans to this Order; and
- (b) with the approval of the relevant highway authority after consultation, such approval not to be unreasonably withheld, form and lay out such other means of access or improve existing means of access, at such locations within the onshore Order limits as the undertaker reasonably requires for the purposes of the authorised works.

Agreements with street authorities

10.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any stopping up, alteration or diversion of a street authorised by this Order; or
 - (b) the carrying out in the street of any of the works referred to in article 7 (power to execute street works).
- (2) Such an agreement may, without limiting paragraph (1),—
- (a) make provision for the street authority to carry out any function under this Order that relates to the street in question;
 - (b) include an agreement between the undertaker and the 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.

Use of private roads for construction

11.—(1) The undertaker may use any private road within the onshore Order limits or any private road abutting the onshore Order limits which has a junction with such a road for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction, maintenance and decommissioning of the authorised works.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 of the 1961 Act.

Supplemental powers

Discharge of water

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

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(1).

(3) The undertaker must 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 he may reasonably impose, but may not be unreasonably withheld.

- (4) The undertaker must 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.

(5) The undertaker must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse.

(1) 1991 c. 56. Section 106 was amended by sections 35(1), 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by 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 any groundwater activity or water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2016⁽²⁾ or override the requirement for a permit under regulation 12(1)(b) of the same.

(8) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 56 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Natural Resources Wales, an internal drainage board, a local authority, or a sewerage undertaker; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991⁽³⁾ have the same meaning as in that Act.

Protective works to buildings

13.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the onshore Order limits as the undertaker considers to be necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
- (b) after the completion of that part of the authorised works in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 56 days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(2) S.I. 2016/1154.

(3) 1991 c. 57.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 49 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which the powers conferred by this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction operation or maintenance of that part of the authorised works,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without prejudice to article 48 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2)(4) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

Power to survey and investigate land

14.—(1) The undertaker may for the purposes of this Order—

- (a) survey or investigate any land shown within the onshore Order limits or which may be affected by the authorised works;
- (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) without prejudice to the generality of paragraph (a), carry out ecological or archaeological investigations on such land;
- (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; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(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 such notice to include notice of the recipient’s right to compensation under paragraph (13).

(4) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(3) If the undertaker proposes to do any of the following, the notice must include details of what is proposed—

- (a) searching, boring or excavating;
- (b) leaving apparatus on land;
- (c) taking samples;
- (d) an aerial survey; and
- (e) carrying out any other activities that may be required to facilitate compliance with the instruments mentioned in paragraph (4).

(4) The instruments referred to in paragraph (3)(e) are—

- (a) The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017;
- (b) The Conservation of Habitats and Species Regulations 2017.

(5) 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 his authority to do so including any warrant issued under paragraph (6); and
- (b) may not use force unless a justice of the peace has issued a warrant under paragraph (6).

(6) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

- (a) that another person has prevented or is likely to prevent the exercise of that power; and
- (b) that it is reasonable to use force in the exercise of that power.

(7) The force that may be authorised by a warrant is limited to that which is reasonably necessary.

(8) A warrant authorising the person to use force must specify the number of occasions on which the undertaker can rely on the warrant when entering and surveying or valuing land.

(9) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(10) Any evidence in proceedings for a warrant under this article must be given on oath.

(11) No trial holes may be made under this article—

- (a) in a carriageway or footway 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.

(12) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 56 days of receiving the application for consent—

- (a) under paragraph (11)(a) in the case of a highway authority; or
- (b) under paragraph (11)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(13) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(14) Paragraphs (1) to (13) apply in relation to Crown land, however a person may only exercise the power conferred by paragraph (1) in relation to Crown land if the person has the permission of the appropriate authority.

Saving for Marine and Coastal Access Act 2009

15. No provision of this Order obviates the need to obtain a marine licence under Part 4 of the 2009 Act or to comply with the conditions of any marine licence.

Power to dredge

16.—(1) The undertaker may, for the purposes of constructing, operating, maintaining, repowering and decommissioning the tidal works from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the land within the offshore Order limits as adjoin or are near to the authorised works and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995⁽⁵⁾) from time to time dredged by it.

(2) No such materials are to be laid down or deposited in contravention of the provisions of any enactment as respects the disposal of waste or dredged arisings.

Provision against danger to navigation

17.—(1) In case of damage to, or destruction or decay of, a tidal work or any part thereof excluding the exposure of cables, the undertaker must, as soon as reasonably practicable and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify Natural Resources Wales, Trinity House, the Maritime and Coastguard Agency, the United Kingdom Hydrographic Office and the Kingfisher Information Service of Seafish and lay down such buoys, exhibit such lights and take other such steps for preventing danger to navigation as Trinity House may from time to time direct.

(2) In case of exposure of cables on or above the seabed, the undertaker must within three days following identification of a potential cable exposure, notify mariners by issuing a notice to mariners and by informing the Kingfisher Information Service of Seafish of the location and extent of exposure. Copies of all notices must be provided to the Natural Resources Wales, the Maritime and Coastguard Agency, Trinity House, and the United Kingdom Hydrographic office within five days.

Abatement of tidal works abandoned or destroyed

18.—(1) Where a tidal work is abandoned, or falls into decay, the Welsh Ministers may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its proper condition, to such an extent and within such limits as the Welsh Ministers think proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over the land above the level of mean high water springs is abandoned or falls into decay and that part of the work on or over land above the level of mean high water springs 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 Welsh Ministers may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Welsh Ministers may take whatever steps the Welsh Ministers consider appropriate to achieve the result required by the notice; and any expenditure incurred by the Welsh Ministers is to be recoverable from the undertaker.

(5) 1995 c. 21.

Survey of tidal works

19.—(1) If the Welsh Ministers consider it expedient to do so, the Welsh Ministers may order a survey and examination of a tidal work or of the site on which it is proposed to construct or repower the work, and any expenditure reasonably incurred by the Welsh Ministers in any such survey and examination is 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 Welsh Ministers 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.

(4) Where the Welsh Ministers propose to order a survey and examination referred to in paragraph (1), the Welsh Ministers must do so in compliance with such reasonable stipulations relating to health, safety, security or confidentiality as the undertaker may impose.

Lights on tidal works

20.—(1) The undertaker must at or near—

(a) a tidal work, including any temporary work; and

(b) any plant, equipment or other obstruction placed in connection with the tidal works,

during the whole time of construction, operation, maintenance, repowering and decommissioning exhibit every night from sunset to sunrise and in periods of restricted visibility such lights, if any, and take such other steps for the prevention of danger to navigation as the Welsh Ministers or Trinity House may from time to time direct.

(2) After the completion of construction or repowering of a tidal work, the undertaker must at the outer extremity of it exhibit every night from sunset to sunrise and in periods of restricted visibility such lights, if any, and must take such steps, if any, for the prevention of danger to navigation as Welsh Ministers or Trinity House may from time to time direct.

Safety of navigation

21.—(1) No tidal works may be commenced constructed operated repowered or decommissioned until a scheme to secure safety of navigation for each relevant phase of the tidal work has been submitted to and approved in writing by the Welsh Ministers in consultation with Trinity House, the Maritime and Coastguard Agency and the Isle of Anglesey County Council.

(2) The scheme submitted for approval must be consistent with the updated navigational risk assessment for the relevant tidal work approved pursuant to Article 3(4) or Article 3(7) and with the Maritime and Coastguard Agency's recommendations contained within MGN654 'Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response' and its annexes or subsequent updates.

(3) The authorised works are to be carried out in accordance with the approved scheme except to the extent that a variation to the approved scheme is agreed by the Welsh Ministers after consulting the persons mentioned in paragraph (1).

(4) For the purpose of article 21(1) the term commence shall include demolition work, investigations for the purpose of assessing seabed conditions and archaeological investigations and the erection of any temporary means of enclosure.