
STATUTORY INSTRUMENTS

2004 No. 933

The Gunfleet Sands Offshore Wind Farm Order 2004

PART III

MISCELLANEOUS AND GENERAL

Power to operate and use works

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

Disapplication of section 36 of the Electricity Act 1989

16. The provisions of section 36 of the Electricity Act 1989(1) shall not apply in relation to the authorised works.

Obstruction and misuse of works

17. 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 or runs foul of any part of the authorised works; or
- (c) in any other way interferes with any of the authorised works or their operation,

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

Temporary exclusion zones during the construction, maintenance or removal of works

18.—(1) Subject to paragraph (3) there shall be a temporary exclusion zone extending to any waters within 500 metres of any part of an authorised work during the construction, maintenance or removal of that work or any part of that work.

(2) Any person who without reasonable excuse navigates a vessel within an exclusion zone shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) An exclusion zone shall not come into effect until—

- (a) 7 days after the publication of a notice to mariners specifying the location and extent of the exclusion zone, the date of its commencement and 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 exclusion zone.

(4) The exclusion zone shall terminate on the completion of the construction, replacement, removal or decommissioning (as the case may be) of the authorised work to which it relates.

(5) As soon as reasonably practicable following the termination of an exclusion zone the undertaker shall—

- (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 the exclusion zone.

(6) This article shall not apply to a person navigating a vessel for the purpose of, or in connection with, the construction, maintenance or operation of the authorised works.

(7) In this article “exclusion zone” means a zone referred to in paragraph (1).

Protection for Environment Agency

19.—(1) The following provisions shall, unless otherwise agreed in writing between the Environment Agency (in this article referred to as “the Agency”) and the undertaker, have effect.

(2) In this article—

“accumulation” means any accumulation of silt or other material;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal; and “construct” and “constructed” shall be construed accordingly;

“drainage work” means any watercourse and any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment, outfall or other structure of whatever nature constructed or used for defence against water (including sea water);

“erosion” means any erosion of the bed or shore of the sea or other structure of whatever nature, under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991(2);

“outfall” means—

- (a) any existing land drainage outfall for which the Agency is responsible; or
- (b) any sewer, pipe or drain provided for groundwater, surface water or storm overflow sewerage;

“specified work” means any permanent or temporary work or operation authorised by or under this Order (which includes for the avoidance of doubt, any dredging and any exploratory geotechnical investigations that may be undertaken); and

“watercourse” has the meaning given in section 221(1) of the Water Resources Act 1991.

(3) If, during the construction of a specified work or within 10 years after the completion of such work there is an accumulation or erosion or alteration of the tidal flow or littoral drift wholly or partly caused by such work which causes damage or the reasonable expectation of damage within 2 years, the undertaker shall, if so required by the Agency before or within the period of 10 years after such completion, and subject to obtaining any necessary consents, remedy so much of such accumulation, erosion, alteration of tidal flow or littoral drift as is caused by such work, in the manner specified in paragraph (6) and, if it refuses or fails so to do, the Agency may itself cause work to be done and may recover the reasonable cost thereof from the undertaker.

(4) Should any such accumulation or erosion or alteration of the tidal flow or littoral drift arise during the said construction or within the said period of 10 years and be remedied in accordance with paragraph (3), any recurrence of such accumulation or erosion or alteration of the tidal flow or littoral drift shall from time to time be so remedied by the undertaker during the said period of 10 years

(2) 1991 c. 57.

and at any time thereafter, save that the undertaker's obligation under this paragraph shall cease in the event that following the remedying of any such accumulation or erosion or alteration of the tidal flow or littoral drift a period of 10 years elapses without any further such accumulation or erosion or alteration of the tidal flow or littoral drift or, if the specified works are decommissioned and removed before the end of that 10 year period, a period of 2 years elapses after such decommissioning and removal without any further such accumulation or erosion or alteration of the tidal flow or littoral drift.

(5) To the extent that damage would have been caused in any event by factors other than the construction of a specified work the undertaker shall not be liable to remedy such accumulation or erosion or alteration of tidal flow or littoral drift.

(6) For the purposes of paragraphs (3) and (4)—

- (a) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may be reasonably required by the Agency; and
- (b) in the case of erosion or alteration of tidal flow or littoral drift, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably required by the Agency provided always that the Agency will not require a remedy which results in betterment upon the average levels of accumulation, erosion, tidal flow or littoral drift for 2 years prior to the Agency's requirement.

(7) In paragraphs (3), (4) and (5), "damage" means any damage to or any adverse effect whatsoever upon the structure or operation of any outfall, flood or sea defences or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991.

(8) For the purposes of paragraph (3) the date of completion of a specified work shall be the date on which it is brought into use.

(9) Without prejudice to the other provisions of this article and subject always to paragraph (10) the undertaker shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss which may be made or taken against, or recovered from or reasonably incurred by, the Agency to the extent they are caused by the construction of any of the specified work or by reason of their maintenance, repair, alteration, renewal, removal, existence or use or any act or omission of the undertaker, its contractors, agents, workmen, or servants whilst engaged upon any such work.

(10) The Agency shall—

- (a) give to the undertaker notice of any such claim, demand, proceedings, costs, damages or expenses or loss as soon as is reasonably practicable;
- (b) consult the undertaker in relation to the conduct of the defence and settlement or compromise thereof and in the event that the conduct is transferred to the undertaker give such reasonable assistance as may reasonably be required by the undertaker in the defence, settlement or compromise thereof; and
- (c) not in any event make a settlement or compromise thereof without the agreement of the undertaker which agreement shall not be unreasonably withheld.

(11) If by reason of the construction of any specified work or by reason of the failure of that work or of the undertaker to maintain it the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the undertaker to the reasonable satisfaction of the Agency and, if the undertaker fails to do so, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

(12) Nothing in paragraph (9) or (11) shall impose liability on the undertaker in respect of accumulation or erosion or alteration of the tidal flow or littoral drift other than accumulation or erosion or alteration of the tidal flow or littoral drift which the undertaker is liable to remedy under paragraph (3) or (4).

(13) Except as otherwise provided by this article nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdiction and obligations conferred, arising or imposed under the Land Drainage Act 1991⁽³⁾, the Salmon and Freshwater Fisheries Act 1975⁽⁴⁾, the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the Agency or any existing approvals or consents granted by the Agency to the undertaker under any enactment, byelaw or regulation.

(14) Any dispute or difference between the undertaker and the Agency arising under, out of, or in connection with this article shall be referred to and settled by a single arbitrator appointed by agreement between the parties on reference to him by either party, after notice in writing to the other, or, in default of agreement, by the President or Vice President of the Institution of Civil Engineers.

Certification of plans, etc.

20. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the sections and the works plans to the Secretary of State for certification that they are true copies, respectively, of the sections and the works plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Transfer of powers

21.—(1) The undertaker may 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 powers conferred by this Order by any other person in accordance with an agreement under paragraph (1) shall 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 after entering into any such agreement the undertaker shall 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 (which shall not be earlier than the date of the receipt of the notice by whichever of the Secretary of State or Trinity House is the last to receive notice).

Crown rights

22.—(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)—

- (a) belonging to 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) belonging to 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.

(3) 1991 c. 59.

(4) 1975 c. 51.