

---

WELSH STATUTORY INSTRUMENTS

---

**2004 No. 3054**

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

**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<sup>(1)</sup>;

“the 1965 Act” (“*Deddf 1965*”) means the Compulsory Purchase Act 1965<sup>(2)</sup>;

“the Applications Rules” (“*y Rheolau Ceisiadau*”) means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000<sup>(3)</sup>; 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<sup>(4)</sup>;

“electric line” (“*llinell drydan*”) has the meaning given by section 64(1) of the Electricity Act 1989<sup>(5)</sup>;

“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;

---

(1) 1961 c. 33.  
(2) 1965 c. 56.  
(3) S.I. 2000/2190.  
(4) 1980 c. 66.  
(5) 1989 c. 29.

“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;

“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(6);

“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 ymgwymerwr*”) 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(7).

#### **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

---

(7) 1985 c. 48.

- (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.

(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(8);

“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(9) 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
- (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—

---

(9) 1981 c. 67.

- (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(10) (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(11) 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

---

(10) 1990 c. 8.

(11) 1989 c. 29.

(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.

(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<sup>(12)</sup> 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>(13)</sup> and, where relevant, in declarations submitted under article 8 of Council Regulation (EEC) No. 2847/93<sup>(14)</sup>.

(5) In this article—

---

<sup>(12)</sup> 1990 c. 8.

<sup>(13)</sup> 1966 c. 38.

<sup>(14)</sup> O.J. No. L261, 20.10.93 p.1.

“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.

(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>(15)</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.

---

(15) 1978 c. 30.

(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*