
WELSH STATUTORY INSTRUMENTS

2021 No. 1478

The Morlais Demonstration Zone Order 2021

PART 1

Preliminary

Citation and Commencement

1. This Order may be cited as the Morlais Demonstration Zone Order 2021 and comes into force on 22 December 2021.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961⁽¹⁾;

“the 1965 Act” means the Compulsory Purchase Act 1965⁽²⁾;

“the 1980 Act” means the Highways Act 1980⁽³⁾;

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981⁽⁴⁾;

“the 1990 Act” means the Town and Country Planning Act 1990⁽⁵⁾;

“the 1991 Act” means the New Roads and Street Works Act 1991⁽⁶⁾;

“the 2004 Act” means the Energy Act 2004⁽⁷⁾;

“the 2009 Act” means the Marine and Coastal Access Act 2009⁽⁸⁾;

“the 2007 Regulations” means the Electricity (Offshore Generating Stations) (Safety Zones) (Application Procedures and Control of Access) Regulations 2007⁽⁹⁾;

“address” includes any number or address used for the purposes of electronic transmission;

“array area” means that part of the offshore Order limits established as the array area in Part 3 of Schedule 1 within which Work No. 1 may be constructed, operated, maintained, repowered and decommissioned;

“authorised works” means the scheduled works identified at Part 1 of Schedule 1 and any other works authorised by this Order including the further works identified at Part 2 of Schedule 1;

“building” includes any structure or erection or any part of a building, structure or erection;

(1) 1961 c. 33.

(2) 1965 c. 56.

(3) 1980 c. 66.

(4) 1981 c. 66.

(5) 1990 c. 8.

(6) 1991 c. 22.

(7) 2004 c. 20.

(8) 2009 c. 23.

(9) S.I. 2007/1948, amended (in relation to Wales) by S.I. 2019/293.

“the book of reference” means the book of reference certified by the Welsh Ministers as the book of reference for the purposes of this Order;

“cable protection” means protection of any cables forming part of the authorised works and may include rock bags, concrete mattresses, boulder replacement over open cut trenches and a conduit or duct which may comprise a J tube or similar split pipe protection;

“carriageway” has the same meaning as in the 1980 Act;

“commence” means begin to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised works either onshore or offshore other than operations consisting of demolition work, investigations for the purpose of assessing ground or seabed conditions, archaeological investigations, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements.

and “commencement” must be construed accordingly;

“communication cables” means telephone cables and/or fibre optic cables for the transmission of electronic communications;

“decommissioning” means the decommissioning of the authorised works (or any part of them) at the end of their operational life but shall not include repowering;

“detailed marine biodiversity enhancement strategy” means a marine biodiversity enhancement strategy which accords with the outline marine biodiversity enhancement strategy and which describes any proposed biodiversity enhancement measures to be delivered as part of the construction or repowering of tidal devices, operational hubs, or installation of cables to which it relates;

“device deployment protocol” means a statement identifying—

- (a) in respect of surface emergent tidal devices and operational hubs in the restricted areas and the remainder of the array area details including dimensions of the tidal device or operational hubs that the undertaker proposes to construct or repower and an updated seascape, landscape and visual assessment undertaken in accordance with the assessment methodology for the environmental statement or any subsequently published best practice guidance of those proposed tidal devices or operational hubs which shall include an assessment of the cumulative impact of the proposed tidal devices and hubs operational and/or consented (pursuant to an approved device deployment protocol) at the time of its preparation, and/or
- (b) in respect of subsurface tidal devices or operational hubs in the restricted area – UKC 8m with a proposed under keel clearance of less than 8m details of the tidal device or operational hub to be deployed, and/or
- (c) in respect of subsurface tidal devices or operational hubs in the restricted area UKC 20m with a proposed under keel clearance of less than 20m details of the tidal device or operational hub to be deployed, and in each case shall be consistent with the updated navigational risk assessment for the relevant tidal work;

“EIA Directive” means [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 as amended by the [Directive 2014/52/EU](#) of the European Parliament and of the Council of 16 April 2014 on the assessment of the effects of certain public and private projects on the environment⁽¹⁰⁾;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network, or
- (b) by other means but while in electronic form;

(10) OJ L 026, 28.1.2012, p.1

“environmental statement” means the environmental statement submitted with the application for this Order as supplemented and amended by the further environmental information submitted in support of the application and certified together as the environmental statement by the Welsh Ministers for the purposes of this Order;

“equivalent document” means a document listed in column 1 of Part 4 of Schedule 1 the content of which is also the subject of a condition on any marine licence granted for tidal works;

“european site” means a European site as defined in Regulation 8 of the Conservation of Habitats and Species Regulations 2017⁽¹¹⁾;

“export cable corridor” means that part of the offshore Order limits established as the export cable corridor in Part 3 of Schedule 1;

“footway” has the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the limits of deviation” means the limits of deviation for the onshore works shown on the onshore plans;

“limits of land to be acquired or used” means the land shown on the onshore plans;

“maintain” includes inspect, repair, refurbish, replace, adjust, alter and also includes, in respect of a constituent part of a work but not the whole of a work, remove, clear, refurbish, reconstruct, demolish, replace and improve any part of the authorised works, but does not include any activity (other than an activity authorised by or under this Order) that is within a class listed in Annex I to the EIA Directive or in a class listed in Annex II to the EIA Directive and, by nature of its size or location, likely to have significant effects on the environment and which has not been considered and assessed in the environmental statement and “maintenance” must be construed accordingly;

“MW” means megawatts;

“Natural Resources Wales” means the Natural Resources Body for Wales;

“offshore Order limits” means the limits within which the tidal works may be constructed, operated, maintained, repowered and decommissioned shown on the offshore works plans;

“offshore works plans” means in relation to the tidal works the plans prepared in pursuance of rule 12(1)(a) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and certified by the Welsh Ministers as the offshore works plans for the purposes of this Order;

“onshore Order limits” means the limits of deviation and the limits of land to be acquired or used for the onshore works as shown on the onshore plans;

“onshore plans” means the plans prepared in pursuance of both rule 12(1)(a) and rule 12(5) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and certified by the Welsh Ministers as the onshore plans for the purposes of this Order;

“onshore works” means so much of the authorised works as lies landward of mean low water springs;

“operational hub” means a hub for the collection and aggregation of electricity generated from a number of tidal devices comprising part of Work No. 1;

“outline marine biodiversity enhancement strategy” means the document certified as the outline marine biodiversity enhancement strategy by the Welsh Ministers for the purposes of this order or any updated or amended outline marine biodiversity enhancement strategy as may either be approved by the Welsh Ministers or by Natural Resources Wales in accordance with the terms of any marine licence that may be granted for the tidal works;

(11) S.I. 2017/1012.

“owner” in relation to land, has the same meaning as in the Acquisition of Land Act 1981(12);

“project parameters” means the parameters for the authorised works as set out in tables 4-21 to 4-30 of the updated chapter 4 of updated environmental information forming part of the environmental statement and carrying document reference MOR-RHDHV-DOC-0004 version F4.0 dated October 2019;

“repower” means the replacement of an existing tidal device with a different tidal device in the same or different location which may include the—

- (a) removal of tidal devices, associated hubs, inter-array cables and monitoring equipment comprising that part of Work No. 1 being repowered; and
- (b) the construction of new tidal devices, associated hubs, inter-array cables and monitoring equipment and other authorised works with Work No. 1 together with any related works identified in Part 2 of Schedule 1;

but does not include any activity (other than an activity authorised by or under this Order) that is within a class listed in Annex 1 to the EIA Directive or in a class listed in Annex II to the EIA Directive and, by nature if its size or location, likely to have significant effects of the environment and which has not been considered and assessed in the environmental statement and “repowered” must be construed accordingly;

“restricted area plan” means the plan marked ‘Restricted Area Plan’ and carrying reference PB5034-ES-004-005 Rev 05 and certified by the Welsh Ministers as the restricted area plan for the purposes of this Order;

“restricted area – northern” means that part of the array area established as the restricted area – northern, in Part 3 of Schedule 1 and shown shaded gold on the Restricted Area Plan;

“restricted area – UKC 8m” means that part of the array area established as the restricted area UKC 8m in Part 3 of Schedule 1 and shown shaded blue on the Restricted Area Plan;

“restricted area – UKC 20m” means that part of the area established as the restricted area - UKC 20m in Part 3 of Schedule 1 and shown shaded purple on the Restricted Area Plan;

“restricted areas” means the restricted area – northern the restricted area – UKC 8m and the restricted area – UKC 20m;

“the Secretary of State” means the Secretary of State for Business Energy and Industrial Strategy or its successor in function with powers to secure the decommissioning of offshore renewable energy installations pursuant to the 2004 Act;

“the sections” means the sections prepared in pursuance of rule 12(3) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and certified by the Welsh Ministers as the sections for the purposes of this Order;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tidal device” means a discrete tidal energy generator comprising tidal energy converter(s), foundations and support structures;

“tidal energy converter” means that part of a tidal device that converts kinetic and potential energy contained within moving tidal water into electricity;

“tidal works” means so much of the authorised works as lies seaward of mean high water spring or any part or parts thereof and shall include any such works which have been repowered and in relation to article 21 (safety of navigation) includes any dredging works whether undertaken pursuant to article 16 (power to dredge) or otherwise;

(12) 1981 c. 67. The definition of “owner” as amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means in relation to the construction, maintenance repowering and decommissioning of the authorised works Menter Môn Morlais Limited or such other company to whom the benefit of the Order is transferred pursuant to article 6(1) and in relation to the tidal works includes any person to whom part of the tidal works or the offshore Order limits has been let pursuant to article 6(2);

“updated navigational risk assessment” means an updated navigational risk assessment for each relevant phase of each tidal work undertaken in accordance with the methodology and recommendations set out in the Maritime and Coastguard Agency’s MGN654 ‘Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response’ and its annexes or subsequent updates thereto and taking into account the location and characteristics of the tidal works proposed for deployment, the method of construction anchoring proposed lighting, operation and any associated maintenance requirements or methods of repowering or decommissioning (as applicable) and an assessment of the cumulative effects of the proposals with previously deployed tidal works and shall include the extent of any proposed safety zone to be applied for in accordance with article 43;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths stated in the description of the authorised works or in any description of powers or lands are to be construed as if the words “or thereabouts” were inserted after each such distance, direction and length, and distances between points on an authorised work are to be taken to be measured along the authorised work.

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 an 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(**13**).

(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.

(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(**14**) 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(**15**) 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—

(13) 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).

(14) S.I. 2016/1154.

(15) 1991 c. 57.

- (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.

(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)(16) 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—

(16) 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.

- (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).

(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(17)) 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.

(17) 1995 c. 21.

(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.

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.

PART 3

Acquisition and Possession of Land

Powers of acquisition

Power to acquire land

22. The undertaker may acquire compulsorily—

- (a) so much of the land shown on the onshore plan within the limits of deviation as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order (being land shown on the onshore plan and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes that are ancillary to the authorised works and their operation.

Power to acquire new rights and impose restrictive covenants

23.—(1) The undertaker may acquire compulsorily such easements or other rights over land referred to in article 22 (power to acquire land) 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) In the case of the land specified in columns (1) and (2) of the table in Part 1 of Schedule 6 (land in which only new rights may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (3) of that table.

(3) In the case of the land specified in columns (1) and (2) of the table in Part 2 (land over which restrictive covenants may be imposed) of Schedule 6 the undertaker’s power under article 22 (power to acquire land) also includes power to impose restrictive covenants over the land for the purposes specified in relation to the land in column (3) of the table.

(4) Subject to—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(7) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights)); and

(b) Schedule A1 to the 1981 Act (as modified by paragraph 7(7) of Schedule 7),

where the undertaker acquires a right over land or imposes a restrictive covenant under paragraph (1), (2) or (3), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 has effect for the purpose of modifying the enactments relating to compensation, and the provisions of the 1965 Act and the 1981 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 or the imposition of a restrictive covenant.

Application of Part 1 of the Compulsory Purchase Act 1965

24.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(18) applies; and

(b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as so applied, has effect with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land).

(4) In section 4A(1)(19) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4”, substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 36 (time limit for exercise of powers of acquisition) of the Morlais Demonstration Zone Order 2021”.

(5) In section 11(1B)(20) (powers of entry), in a case where the notice to treat relates only to the acquisition of an easement or other right over land or the imposition of a restrictive covenant, for “3 months” substitute “1 month”.

(6) In section 11A(21) (powers of entry: further notices of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”; and

(b) in subsection (2), after “land” insert “under that provision”.

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 36 (time limit for exercise of powers of acquisition) of the Morlais Demonstration Zone Order 2021”.

(8) In Schedule 2A(22) (counter-notice requiring purchase of land not in notice to treat)—

(a) paragraphs 1(2) and 14(2) substitute—

(18) 1981 c. 67.

(19) Inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(20) Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.

(21) Inserted by section 186(3) of the Housing and Planning Act 2016.

(22) As inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.

- “(2) But see article 26(3) (Power to acquire subsoil only) of the Morlais Demonstration Zone Order 2021, which excludes the acquisition of subsoil only from this Schedule; and”
- (b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 28 (temporary use of land for construction of works) of the Morlais Demonstration Zone Order 2021.”

Application of the 1981 Act

- 25.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (4) Omit section 5A(**23**) (time limit for general vesting declaration).
- (5) In section 5B(1)(**24**) (extension of time limit during challenge) for “section 23 of the Acquisition of Land 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 36 (time limit for exercise of powers of acquisition) of the Morlais Demonstration Zone Order 2021”.
- (6) In section 6(**25**) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A(**26**) of the Transport and Works Act 1992”.
- (7) In section 7(**27**) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (8) In Schedule A1(**28**) (counter-notice requiring purchase of land not in general vesting declaration), paragraph 1(2) —
- “(2) But see article 26(3) (power to acquire subsoil only) of the Morlais Demonstration Zone Order 2021 which excludes the acquisition of subsoil only from this Schedule.”
- (9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied to the acquisition of land under article 22 (power to acquire land).

Power to Acquire Subsoil Only

26.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1)(a) or (b) of article 22 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(23) Inserted by section 182(2) of the Housing and Planning Act 2016.

(24) Inserted by section 202(2) of the Housing and Planning Act 2016.

(25) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.

(26) Inserted by S.I. 2017/16.

(27) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(28) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(2) Where the undertaker acquires any part of or rights in the subsoil of land under paragraph (1) it will not be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 24 (application of Part 1 of the Compulsory Purchase Act 1965));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act (as modified by article 25 (application of the 1981 Act)); and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar vault, arch or other construction forming part of a house, building or manufactory.

(5) Schedule 8 contains provision which in certain cases restricts the power under article 22 to the subsoil or under-surface of the land as lies more than 9 metres below the level of the surface.

Rights under or over streets

27.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the onshore Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised works.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary Possession of Land

Temporary use of land for construction of works

28.—(1) The undertaker may, in connection with the carrying out of the authorised works—

(a) enter upon and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and

- (ii) any other land within the onshore Order limits in respect of which no notice of entry has been served under section 11(29) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been executed under section 4(30) (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land;
- (d) construct any works required as mentioned in article 3 (power to construct maintain repower and decommission works); and
- (e) construct any mitigation works on that 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—
- (a) in the case of any land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised works specified in relation to that land in column (4) of Schedule 9; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the works or other purpose for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.
- (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—
- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraphs (1)(d) or (1)(e);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised works; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised works.
- (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 1 of the 1961 Act.
- (7) Without affecting article 48 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(31) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from

(29) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 and S.I. 2009/1307.

(30) Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

(31) 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.

the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) Where the undertaker takes possession of land under this article, it is not required to acquire the land or any interest in it.

(9) Section 13(32) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1) (application of Part 1 of the 1965 Act).

Temporary use of land for maintenance of works

29.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised works, the undertaker may—

- (a) enter upon and take temporary possession of any land within the onshore Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) 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.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised works for which possession of the land was taken.

(5) 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.

(6) 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.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, will be determined under Part 1 of the 1961 Act.

(8) Without prejudice to article 48 (no double recovery), nothing in this article affects 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 (6).

(9) Where the undertaker takes possession of land under this article, it will not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24 (application of Part 1 of the Compulsory Purchase Act 1965).

(11) In this article “the maintenance period”, in relation to an authorised work, means the period of 5 years beginning with the date on which the work is opened for use.

(32) Section 13 was amended by sections 62(3), 139 and 146 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

Incorporation of the mineral code

30. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) are incorporated in this Order subject to the modifications that—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for “undertaking” substitute “authorised works”; and
- (c) for “compulsory purchase order” substitute “this Order”.

Protection of rights to fish

31.—(1) The undertaker must pay to the owners, occupiers or persons otherwise having a proprietary right of fishing injuriously affected by the construction, operation, maintenance or decommissioning of the authorised works, or otherwise by the exercise of the powers conferred on the undertaker by this Order, compensation for any damage sustained by such persons by reason of the construction, operation, maintenance or decommissioning or the exercise of the powers.

(2) Compensation under paragraph (1) must be determined, in case of dispute, under Part 1 of the 1961 Act.

Compensation

Disregard of certain interests and improvements

32.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any 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” 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.

Set-off for enhancement in value of retained land

33.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 23 (power to acquire new rights and impose restrictive covenants), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to him by reason of the construction of the authorised works.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Power to override easements and other rights

34.—(1) Any authorised activity which takes place on land within the onshore Order limits (whether the activity is undertaken by the undertaker, or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the construction, operation, maintenance or decommissioning of any part of the authorised works;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where any interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person that is actionable at the suit of any person on any grounds other than such an interference or breach as mentioned in paragraph (1).

Private rights over land

35.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

- (b) on the date of entry on the land by the undertaker under section 11(33) (powers of entry) of the 1965 Act,

whichever is the sooner.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant being imposed in favour of the undertaker, whether compulsorily or by agreement;
- (b) on the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act; or
- (c) on the commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights 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 or by the imposition of any restrictive covenant under this article is entitled to compensation, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 271 or 272 (extinguishment of rights of statutory undertakers etc.) of the 1990 Act(34) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry on to it; or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right of way is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(33) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measures 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16, to the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(34) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(8) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Time limit for exercise of powers of acquisition

36.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat may be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 24 (application of Part 1 of the Compulsory Purchase 1965 Act); and
- (b) no declaration may be executed under section 4 of the 1981 Act as applied by article 25 (application of the 1981 Act).

(2) The powers conferred by article 28 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

Miscellaneous and General

Disapplication of legislative provisions

37.—(1) The provisions of section 36 of the Electricity Act 1989⁽³⁵⁾ do not apply in relation to the authorised works.

(2) The provisions of section 23 of the Land Drainage Act 1991⁽³⁶⁾ do not apply in relation to the authorised works.

Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽³⁷⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1) (d), (e), (fb), (g), (ga) or (h) of that Act⁽³⁸⁾, no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction maintenance of the authorised works and is attributable to the carrying out of the authorised works in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61⁽³⁹⁾ (prior consent for work on construction site), of the Control of Pollution Act 1974⁽⁴⁰⁾;

⁽³⁵⁾ 1989 c. 29.

⁽³⁶⁾ 1991 c. 59.

⁽³⁷⁾ 1990 c. 43. Section 82 was amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25), section 103(1), (4) and (5) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and S.I. 2015/664.

⁽³⁸⁾ Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 8).

⁽³⁹⁾ Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 (c. 25) and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

⁽⁴⁰⁾ 1974 c. 40.

- (b) is a consequence of the construction, maintenance or decommissioning of the authorised works and cannot reasonably be avoided;
- (c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised works and is attributable to the use of the authorised works in accordance with a noise monitoring scheme agreed with the planning authority pursuant to a condition of the deemed planning permission; or
- (d) is a consequence of the use of the authorised works and cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (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) 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 works.

Planning permission and supplementary matters

39.—(1) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969⁽⁴¹⁾ (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975⁽⁴²⁾, or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order is treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999⁽⁴³⁾ as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order is not to be treated as an outline planning permission.

(3) Planning permission which is deemed by a direction under section 90(2A)⁽⁴⁴⁾ of the 1990 Act to be granted in relation to works authorised by this Order is to 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).

Power to lop trees overhanging the authorised works and removal of hedgerows

40.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised works or any apparatus used on the authorised works.

(2) In exercising the powers of paragraph (1), the undertaker must not do any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

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

(4) The undertaker may remove any hedgerows within the onshore Order limits that may be required to be removed for the purposes of carrying out the authorised works.

⁽⁴¹⁾ S.I. 1969/17 (Note these have been revoked).

⁽⁴²⁾ S.I. 1975/148.

⁽⁴³⁾ S.I. 1999/1892.

⁽⁴⁴⁾ Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

Application of landlord and tenant law

41.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, operation, repowering and decommissioning of the authorised works, or any part of them;

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Obstruction of construction of authorised works

42. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the undertaker in constructing, maintaining, operating, repowering or decommissioning of any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

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

Safety zones for navigation, trawling and anchoring

43.—(1) The Welsh Ministers may in connection with the construction, operation, maintenance, repowering and decommissioning of any tidal works issue a notice or notices declaring that the areas described in the notice are to be safety zones.

(2) Any applications made by the Undertaker for a safety zone shall include an updated navigational risk assessment.

(3) Sections 95 to 98 of the 2004 Act and the 2007 Regulations shall apply to an application under paragraphs (2) and the declaration and operation of safety zones under paragraph (1).

(4) In this Article “safety zones” has the same meaning as in Chapter 2 of the 2004 Act.

Statutory undertakers and protective provisions etc

44. Schedule 10 (provisions relating to statutory undertakers and protective provisions etc) has effect.

Protection of interests

45. Schedule 11 (protective provisions) has effect.

Certification of plans etc

46. The undertaker must, as soon as practicable after the making of this Order, submit copies of the environmental statement, book of reference, the offshore works plans, the onshore plans, the outline marine biodiversity enhancement strategy, the sections and the restricted area plan to the Welsh Ministers for certification that they are, respectively, true copies of the environmental statement, book of reference, the offshore works plans, the onshore plans, the outline marine biodiversity enhancement strategy, the sections and the restricted area plan referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

47.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(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 13 of the Legislation (Wales) Act 2019⁽⁴⁵⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, his 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 him 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) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that he requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) A person may revoke his consent to the use of electronic transmission in accordance with paragraph (8).

(45) 2019 anaw 4.

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) he must give notice in writing or by electronic transmission revoking any consent given by him for that purpose; and
- (b) such revocation will be final and will take effect on a date specified by the person in the notice but that date may not be less than 7 days after the date on which the notice is given.

(9) This article is not to be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

48. 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.

Arbitration

49.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.

(2) For the avoidance of doubt, any matter for which the consent or approval of the Welsh Ministers is required, or which is subject to the direction making powers of Trinity House, under any provision of this Order shall not be subject to arbitration.

Saving for Trinity House

50. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

The Neighbourhood Planning Act 2017

51. The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017⁽⁴⁶⁾ do not apply as regards this Order.

17 December 2021

Julie James
Minister for Climate Change, one of the Welsh
Ministers

(46) 2017 c. 20.