WELSH STATUTORY INSTRUMENTS

2004 No. 3054 (W.263)

TRANSPORT AND WORKS, WALES
OFFSHORE INSTALLATIONS, WALES
ELECTRICITY, WALES

The Scarweather Sands Offshore Wind Farm Order 2004

Made - - - -	*16 November 2004*
Coming into force - -	*19 November 2004*

WHEREAS an application has been made to the National Assembly for Wales ("the National Assembly"), in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000(**1**) made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992(**2**) ("the 1992 Act"), for an Order under section 3 of the 1992 Act;

AND whereas the National Assembly has caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act;

AND whereas the National Assembly, having considered the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change to the proposals;

AND whereas notice of the National Assembly's determination was published in the London Gazette on 2 November 2004;

NOW THEREFORE, the National Assembly, in exercise of the powers conferred on the Secretary of State by sections 3 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 15 to 17 of Schedule 1 to, the 1992 Act, and which are now exercisable by the National Assembly(**3**), and of all other powers enabling it in that behalf, hereby makes the following Order:

(**1**) S.I. 2000/2190.
(**2**) 1992 c. 42.
(**3**) *See* The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and The National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) (W.5).

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(**4**);

"the 1965 Act" ("*Deddf 1965*") means the Compulsory Purchase Act 1965(**5**);

"the Applications Rules" ("*y Rheolau Ceisiadau*") means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000(**6**); 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" ("*cerbytffordd*"), "footpath" ("*llwybr troed*"), "highway" ("*priffordd*") and "highway authority" ("*awdurdod priffyrdd*") have the same meaning as in the Highways Act 1980(**7**);

"electric line" ("*llinell drydan*") has the meaning given by section 64(1) of the Electricity Act 1989(**8**);

"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;

"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;

(**4**) 1961 c. 33.
(**5**) 1965 c. 56.
(**6**) S.I. 2000/2190.
(**7**) 1980 c. 66.
(**8**) 1989 c. 29.

"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(**9**);

"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 ymgymerwr*") 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.

(**9**) 1991 c. 22.

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);