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WELSH STATUTORY INSTRUMENTS

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

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

“the 1980 Act” means the Highways Act 1980<sup>(3)</sup>;

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(4)</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990<sup>(5)</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991<sup>(6)</sup>;

“the 2004 Act” means the Energy Act 2004<sup>(7)</sup>;

“the 2009 Act” means the Marine and Coastal Access Act 2009<sup>(8)</sup>;

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

“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;

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(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<sup>(10)</sup>;

“electronic transmission” means a communication transmitted—

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

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(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<sup>(11)</sup>;

“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;

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(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;

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(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.