
WELSH STATUTORY INSTRUMENTS

2021 No. 1478

The Morlais Demonstration Zone Order 2021

PART 4

Miscellaneous and General

Disapplication of legislative provisions

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

(2) The provisions of section 23 of the Land Drainage Act 1991⁽²⁾ 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⁽³⁾ (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⁽⁴⁾, 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⁽⁵⁾ (prior consent for work on construction site), of the Control of Pollution Act 1974⁽⁶⁾;
- (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.

(1) 1989 c. 29.

(2) 1991 c. 59.

(3) 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.

(4) 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).

(5) 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).

(6) 1974 c. 40.

(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(7) (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(8), 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(9) 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)(10) 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.

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

(7) [S.I. 1969/17](#) (Note these have been revoked).

(8) [S.I. 1975/148](#).

(9) [S.I. 1999/1892](#).

(10) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act [1992 \(c. 42\)](#).

- (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⁽¹¹⁾ 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).

(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

(11) 2019 anaw 4.

(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(12) do not apply as regards this Order.