
STATUTORY INSTRUMENTS

2004 No. 933

**TRANSPORT AND WORKS, ENGLAND
OFFSHORE INSTALLATIONS, ENGLAND
ELECTRICITY, ENGLAND**

The Gunfleet Sands Offshore Wind Farm Order 2004

Made - - - - 25th March 2004
Coming into force - - 16th April 2004

Whereas an application has been made to the Secretary of State for Trade and Industry (“the Secretary of State”), 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 sections 3 and 5 of the 1992 Act;

And whereas the Secretary of State has taken into consideration the grounds of objections to that application;

And whereas the Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in her opinion do not make any substantial change in the proposals;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 10th December 2003;

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by sections 3 and 5 of, and paragraphs 1,2,4,7,8,10,15 and 17 of Schedule 1 to, the 1992 Act hereby makes the following Order:

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Gunfleet Sands Offshore Wind Farm Order 2004 and shall come into force on 16th April 2004.

(1) S.I. 2000/2190.
(2) 1992 c. 42.

Interpretation

2.—(1) In this Order—

“authorised works” means the scheduled works, the works and facilities described in article 3(4) and, except in articles 5 to 12, the existing mast;

“Civil Aviation Authority” means the body corporate called the Civil Aviation Authority constituted by the Civil Aviation Act 1982(3);

“the existing mast” means the existing anemometry mast on the bed of the North Sea adjoining the coast at Clacton-on-Sea in the District of Tendring, situated at reference point 620910E, 207857N;

“the level of high water” means the level of mean high water springs;

“the limits of deviation”, in relation to a work, means the limits of deviation related to that work which are shown on the works plans;

“maintain” includes inspect, repair, adjust, alter, relay, remove, reconstruct and replace; and “maintenance” shall be construed accordingly;

“notice to mariners” includes any notice to mariners which may be issued to mariners by the Admiralty, Trinity House, Queen’s Harbourmasters, government departments and harbour and pilotage authorities;

“reference point” means Ordnance Survey National Grid reference point;

“the scheduled works” means the works specified in the Schedule to this Order;

“the sections” means the sections certified by the Secretary of State as the sections for the purposes of this Order;

“the substation” means the substation described in paragraph 1(b) of the Schedule to this Order;

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

“the undertaker” means GE Gunfleet Limited or any person to whom the powers conferred by this Order are transferred in an agreement pursuant to article 21;

“vessel” 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;

“wind turbine” means a wind turbine generator described in paragraph 1(a) of the Schedule to this Order; and

“the works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order.

(2) All directions, distances, lengths and points stated in any description of works or powers shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, length and point.

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 shall 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, maintenance or operation of the scheduled works, namely—
- (a) temporary or permanent landing places, jetties, or moorings or other means of accommodating vessels in the construction and maintenance of the scheduled works;
 - (b) buoys, beacons, fenders and other navigational warning or ship impact protection works;
 - (c) scour protection works; and
 - (d) such other works, apparatus, plant and machinery of whatever description as may be necessary or expedient.

Power to deviate

- 4.—(1) In constructing or maintaining any scheduled work, the undertaker may—
- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation, and
 - (b) deviate vertically from the levels shown on the sections—
 - (i) in respect of the height of the towers of the wind turbines and subject to paragraph (2), to any extent not exceeding 10 metres downwards;
 - (ii) in respect of the piled foundations of the wind turbines into the seabed to any extent upwards and to any extent not exceeding 40 metres downwards;
 - (iii) in respect of the buried cables described in sub-paragraphs 1(c) and (d) of the Schedule to this Order to any extent not exceeding 2 metres upwards or downwards; and
 - (iv) in respect of the substation 10 metres upwards or downwards.
- (2) There shall be a minimum distance of 20 metres between the lowest point of the rotating blades of the wind turbines and the level of high water.

Protection of navigation, air traffic and control of noise

Works not to be executed without approval of the Secretary of State

- 5.—(1) No authorised work shall be constructed or altered, except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If an authorised work is constructed or altered, in contravention of this article or any condition or restriction imposed under this article—

- (a) the Secretary of State may by notice in writing require the undertaker at its own expense to remove the authorised work or any part of it and restore the site to a safe and proper condition; and
- (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the authorised work or part of it and restore the site to a safe and proper condition and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.

Provision against danger to navigation

6. In case of damage to, or destruction or decay of, an authorised work or any part of such work the undertaker shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

Abatement of works abandoned or decayed

7.—(1) Where an authorised work is abandoned, or allowed to fall into decay, the Secretary of State may by notice in writing, and following consultation with the undertaker, require the undertaker at its own expense either to repair and restore the work or any part of it, or to remove the work and restore the site of the work to a safe and proper condition, to such an extent and within such limits as may be specified in the notice.

(2) The undertaker shall remove from the site any individual wind turbine generator which ceases to generate electricity for more than 6 months unless such cessation is due to maintenance, or the Secretary of State has given prior written approval to the generator remaining on the site.

(3) At least 3 months before the scheduled works cease to generate electricity or the termination of the lease from the Crown Estate Commissioners relating to the scheduled works (without a new lease being granted), whichever is the sooner, there shall be submitted to, approved in writing by, and deposited with the Secretary of State a decommissioning plan for the removal of the scheduled works, and the restoration and aftercare of the site having regard to minimising the environmental impact. Such a plan shall include a timetable for the removal of the scheduled works and shall take into account any applicable legislative requirements, technology and best practice at the time of decommissioning.

(4) Unless otherwise agreed with the Secretary of State the undertaker shall, following approval of the decommissioning plan pursuant to paragraph (3), arrange for the scheduled works to be decommissioned and the site restored in accordance with the plan, and within one month of completion of the work, provide the Secretary of State with written confirmation that it has been completed.

(5) Unless otherwise agreed by the Secretary of State, within 6 months of completion of the decommissioning of the scheduled works pursuant to paragraph (4) the undertaker shall report on the aftercare of the site pursuant to paragraph (3), and at 6 monthly intervals thereafter until the completion of the aftercare period.

(6) If the undertaker ceases to operate the scheduled works without submitting a decommissioning plan pursuant to paragraph (3) the Secretary of State may take such steps as the Secretary of State considers fit to decommission the scheduled works and expenditure incurred in doing so shall be recoverable from the undertaker.

Survey of works

8.—(1) The Secretary of State may at any time, if the Secretary of State deems it expedient, order a survey and examination of an authorised work or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the undertaker.

(2) Subject to paragraph (3), such surveys shall not be ordered more frequently than once a year, and before ordering such a survey—

- (a) the Secretary of State shall 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) shall not apply in an emergency.

Permanent lights, navigational safety aids and colour

9.—(1) After the completion of the authorised works the undertaker shall around the perimeter of the wind turbines exhibit every night from sunset to sunrise such lights, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker shall exhibit every night from sunset to sunrise lights for the prevention of danger to aircraft, of a shape, colour and character as directed by the Civil Aviation Authority.

(3) Unless the Secretary of State otherwise directs, the undertaker shall ensure that so much of any wind turbine as is above the level up to which Trinity House direct colouring for navigational safety reasons, and all nacelles and blades, are painted light grey (colour code RAL 7035).

Lights on works during construction

10. The undertaker shall at or near an authorised work during the whole time of the construction, alteration, replacement, or reconstruction of the work exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

Active safety management system

11.—(1) The wind turbines shall be operated in accordance with an active safety management system for the purpose of minimising the risk of vessels colliding with the towers or rotating blades of the wind turbines and to facilitate search and rescue activities.

(2) The details of the active safety management system shall be approved by the Maritime and Coastguard Agency (such approval not to be unreasonably withheld) but the system shall include—

- (a) provision for each wind turbine to be marked by day and night with clearly visible identification systems;
- (b) provision for communication procedures between mariners in distress, the Maritime and Coastguard Agency and the central control room for the operation of the wind turbines when a vessel is in distress;
- (c) provision for the immediate shutting down of one or more of the wind turbines at the request of the Maritime and Coastguard Agency in a position which secures the maximum clearance between the lowest point of the blades and the water level; and
- (d) provision for testing the emergency procedures at times and in a manner reasonably required by the Maritime and Coastguard Agency.

Construction and operational noise

12.—(1) Unless otherwise directed by the Secretary of State, the undertaker—

- (a) shall comply with British Standard 5228 (Noise and Vibration Control on Construction and Open Sites) Parts 1 and 2: 1997 and Part 4: 1992 in respect of all activities carried out during the construction, maintenance or decommissioning of the authorised works; and
- (b) shall obtain, before the commencement of such activities, the approval by Tendring District Council of maximum levels of daytime and night time noise to be generated by such activities, and shall ensure that such levels are not exceeded.

(2) Unless otherwise approved in writing by the Secretary of State, the undertaker shall ensure that the rating level of the noise generated by the operation of the wind turbines does not exceed 35dB LA90, up to a wind speed of 10 metres per second, when measured in accordance with the guidance contained in “The Assessment and Rating of Noise from Wind Farms” (ETSU-R-1997)(4), measured in free field conditions at a point 1.2 metres above ground level at any residential property.

Execution by Secretary of State of works in default

13. If, on the expiration of 30 days from the date when a notice under article 5(2)(a) or 7(1) is served upon the undertaker it has failed, without reasonable excuse, to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the undertaker.

Offences

14. If the undertaker, without reasonable excuse, fails—

- (a) to comply with a direction given under article 6, 9(1) or (2) or 10;
- (b) to comply with the requirements of article 7(3), (4) or (5), 9(3) or 12;
- (c) to give notification as required by article 6; or
- (d) to operate the wind turbines in accordance with article 11;

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

PART III

MISCELLANEOUS AND GENERAL

Power to operate and use works

15. The undertaker may operate and use the authorised works as a system for generating and transmitting electricity.

Disapplication of section 36 of the Electricity Act 1989

16. The provisions of section 36 of the Electricity Act 1989(5) shall not apply in relation to the authorised works.

(4) Published 30th September 1996.

(5) 1989 c. 29.

Obstruction and misuse of works

17. Any person who without reasonable excuse—

- (a) obstructs another person from constructing or maintaining any of the authorised works under the powers conferred by this Order;
- (b) makes fast to or runs foul of any part of the authorised works; or
- (c) in any other way interferes with any of the authorised works or their operation,

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

Temporary exclusion zones during the construction, maintenance or removal of works

18.—(1) Subject to paragraph (3) there shall be a temporary exclusion zone extending to any waters within 500 metres of any part of an authorised work during the construction, maintenance or removal of that work or any part of that work.

(2) Any person who without reasonable excuse navigates a vessel within an exclusion zone shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) An exclusion zone shall not come into effect until—

- (a) 7 days after the publication of a notice to mariners specifying the location and extent of the exclusion zone, the date of its commencement and its intended duration; and
- (b) the undertaker has taken such other steps as the Secretary of State may require to notify shipping of the proposed exclusion zone.

(4) The exclusion zone shall terminate on the completion of the construction, replacement, removal or decommissioning (as the case may be) of the authorised work to which it relates.

(5) As soon as reasonably practicable following the termination of an exclusion zone the undertaker shall—

- (a) publish notice of the termination by means of a notice to mariners; and
- (b) take such other steps as the Secretary of State may require to notify shipping of the termination of the exclusion zone.

(6) This article shall not apply to a person navigating a vessel for the purpose of, or in connection with, the construction, maintenance or operation of the authorised works.

(7) In this article “exclusion zone” means a zone referred to in paragraph (1).

Protection for Environment Agency

19.—(1) The following provisions shall, unless otherwise agreed in writing between the Environment Agency (in this article referred to as “the Agency”) and the undertaker, have effect.

(2) In this article—

“accumulation” means any accumulation of silt or other material;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal; and “construct” and “constructed” shall be construed accordingly;

“drainage work” means any watercourse and any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment, outfall or other structure of whatever nature constructed or used for defence against water (including sea water);

“erosion” means any erosion of the bed or shore of the sea or other structure of whatever nature, under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991(6);

“outfall” means—

- (a) any existing land drainage outfall for which the Agency is responsible; or
- (b) any sewer, pipe or drain provided for groundwater, surface water or storm overflow sewerage;

“specified work” means any permanent or temporary work or operation authorised by or under this Order (which includes for the avoidance of doubt, any dredging and any exploratory geotechnical investigations that may be undertaken); and

“watercourse” has the meaning given in section 221(1) of the Water Resources Act 1991.

(3) If, during the construction of a specified work or within 10 years after the completion of such work there is an accumulation or erosion or alteration of the tidal flow or littoral drift wholly or partly caused by such work which causes damage or the reasonable expectation of damage within 2 years, the undertaker shall, if so required by the Agency before or within the period of 10 years after such completion, and subject to obtaining any necessary consents, remedy so much of such accumulation, erosion, alteration of tidal flow or littoral drift as is caused by such work, in the manner specified in paragraph (6) and, if it refuses or fails so to do, the Agency may itself cause work to be done and may recover the reasonable cost thereof from the undertaker.

(4) Should any such accumulation or erosion or alteration of the tidal flow or littoral drift arise during the said construction or within the said period of 10 years and be remedied in accordance with paragraph (3), any recurrence of such accumulation or erosion or alteration of the tidal flow or littoral drift shall from time to time be so remedied by the undertaker during the said period of 10 years and at any time thereafter, save that the undertaker’s obligation under this paragraph shall cease in the event that following the remedying of any such accumulation or erosion or alteration of the tidal flow or littoral drift a period of 10 years elapses without any further such accumulation or erosion or alteration of the tidal flow or littoral drift or, if the specified works are decommissioned and removed before the end of that 10 year period, a period of 2 years elapses after such decommissioning and removal without any further such accumulation or erosion or alteration of the tidal flow or littoral drift.

(5) To the extent that damage would have been caused in any event by factors other than the construction of a specified work the undertaker shall not be liable to remedy such accumulation or erosion or alteration of tidal flow or littoral drift.

(6) For the purposes of paragraphs (3) and (4)—

- (a) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may be reasonably required by the Agency; and
- (b) in the case of erosion or alteration of tidal flow or littoral drift, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably required by the Agency provided always that the Agency will not require a remedy which results in betterment upon the average levels of accumulation, erosion, tidal flow or littoral drift for 2 years prior to the Agency’s requirement.

(7) In paragraphs (3), (4) and (5), “damage” means any damage to or any adverse effect whatsoever upon the structure or operation of any outfall, flood or sea defences or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991.

(8) For the purposes of paragraph (3) the date of completion of a specified work shall be the date on which it is brought into use.

(9) Without prejudice to the other provisions of this article and subject always to paragraph (10) the undertaker shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss which may be made or taken against, or recovered from or reasonably incurred by, the Agency to the extent they are caused by the construction of any of the specified work or by reason of their maintenance, repair, alteration, renewal, removal, existence or use or any act or omission of the undertaker, its contractors, agents, workmen, or servants whilst engaged upon any such work.

(10) The Agency shall—

- (a) give to the undertaker notice of any such claim, demand, proceedings, costs, damages or expenses or loss as soon as is reasonably practicable;
- (b) consult the undertaker in relation to the conduct of the defence and settlement or compromise thereof and in the event that the conduct is transferred to the undertaker give such reasonable assistance as may reasonably be required by the undertaker in the defence, settlement or compromise thereof; and
- (c) not in any event make a settlement or compromise thereof without the agreement of the undertaker which agreement shall not be unreasonably withheld.

(11) If by reason of the construction of any specified work or by reason of the failure of that work or of the undertaker to maintain it the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the undertaker to the reasonable satisfaction of the Agency and, if the undertaker fails to do so, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

(12) Nothing in paragraph (9) or (11) shall impose liability on the undertaker in respect of accumulation or erosion or alteration of the tidal flow or littoral drift other than accumulation or erosion or alteration of the tidal flow or littoral drift which the undertaker is liable to remedy under paragraph (3) or (4).

(13) Except as otherwise provided by this article nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdiction and obligations conferred, arising or imposed under the Land Drainage Act 1991(7), the Salmon and Freshwater Fisheries Act 1975(8), the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the Agency or any existing approvals or consents granted by the Agency to the undertaker under any enactment, byelaw or regulation.

(14) Any dispute or difference between the undertaker and the Agency arising under, out of, or in connection with this article shall be referred to and settled by a single arbitrator appointed by agreement between the parties on reference to him by either party, after notice in writing to the other, or, in default of agreement, by the President or Vice President of the Institution of Civil Engineers.

Certification of plans, etc.

20. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the sections and the works plans to the Secretary of State for certification that they are true copies, respectively, of the sections and the works plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Transfer of powers

21.—(1) The undertaker may enter into, and carry into effect, agreements for the transfer to another person of all or any of the powers conferred on the undertaker by this Order.

(7) 1991 c. 59.

(8) 1975 c. 51.

(2) The exercise of any powers conferred by this Order by any other person in accordance with an agreement under paragraph (1) shall be subject to the same obligations and liabilities under this Order as would apply if that power were exercised by the undertaker.

(3) Not later than 21 days after entering into any such agreement the undertaker shall give written notice to the Secretary of State and to Trinity House stating the name and address of the person to whom the powers are being transferred and the date when the transfer is to take effect (which shall not be earlier than the date of the receipt of the notice by whichever of the Secretary of State or Trinity House is the last to receive notice).

Crown rights

22.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown, and in particular, nothing in this Order authorises the undertaker to take, use, enter upon or in any manner interfere with any land, hereditaments, or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to such conditions or upon such terms as may be considered necessary or appropriate.

Signed by authority of the Secretary of State for Trade and Industry

25th March 2004

Jim Campbell,
Director, Licensing and Consents Unit

SCHEDULE

Articles 2(1), 3(1) and (2) and 4

THE SCHEDULED WORKS

1. The works which the undertaker is authorised to construct and maintain by article 3(1) are the following works on the bed of the North Sea adjoining the coast at Clacton-on-Sea in the district of Tendring, county of Essex—

- (a) up to 30 wind turbine generators fixed to the seabed by up to four piles for each wind turbine and extending to a height of up to 130.5 metres above the level of high water, fitted with rotating blades with a diameter of up to 110 metres and situated at the following reference points—

Wind turbine number	Reference Point Easting	Reference Point Northing
1	620259	208141
2	621150	206647
3	620937	207023
4	620717	207392
5	620497	207763
6	620992	208646
7	623927	210669
8	624814	209182
9	624591	209553
10	624371	209924
11	624151	210297
12	623193	210164
13	624080	208675
14	623860	209044
15	623641	209415
16	623419	209783
17	622459	209658
18	623346	208168
19	623125	208539
20	622906	208911
21	622682	209283
22	621726	209152
23	622614	207660
24	622393	208032
25	622174	208404
26	621951	208777

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Wind turbine number	Reference Point Easting	Reference Point Northing
27	621881	207154
28	621663	207525
29	621442	207894
30	621222	208261

- (b) a substation at reference point 622794E, 209097N with a height of 42 metres above the level of high water and a span of 24 metres (accommodating transformers, switch gear, back-up generators and other technical installations);
- (c) a network of cables buried under the seabed connecting the wind turbines to the substation, to run in direct lines as follows—
- between the wind turbines numbered 2, 3, 4, 5, 1, 6, 22, 17, 21 and the substation,
 - between the wind turbines numbered 28, 29, 30 and 6,
 - between the wind turbines numbered 27, 23, 24, 25, 26 and 21,
 - between the wind turbines numbered 18, 19, 20 and the substation,
 - between the wind turbines numbered 13, 14, 15, 16, 12 and 17, and
 - between the wind turbines numbered 8, 9, 10, 11, 7 and 12;
- (d) a cable buried at a depth of 3 metres below the level of the seabed connecting the substation to the shore, commencing by a connection with that substation then proceeding in a north-north-westerly direction until it reaches the shore at Holland-on-Sea at reference point 621460E, 216855N.

2. In this schedule references to the location of a wind turbine or the substation are references to the centre point of that turbine or substation.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the construction and operation of an offshore wind farm and associated works at Gunfleet Sands, off the coast near Clacton-on-Sea, Essex and the creation of temporary exclusion zones for navigation.

A copy of the works plans and sections prescribed by rules 12(1) and 12(3) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 and certified in accordance with article 20 of the Order may be inspected at the offices of G E Gunfleet Limited, Prince Consort House, 27-29 Albert Embankment, London SE1 7TJ.