
STATUTORY INSTRUMENTS

2004 No. 933

The Gunfleet Sands Offshore Wind Farm Order 2004

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)(1), 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.