

ROBIN RIGG OFFSHORE WIND FARM (NAVIGATION AND FISHING) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. The following documents are published to accompany the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill introduced in the Scottish Parliament on 15 May 2003:

- Explanatory Notes;
- a Promoters' Statement; and
- the Presiding Officer's Statement on legislative competence.

The Explanatory Notes and Promoters' Statement were provided under Rule 9A.2 of the Parliament's Standing Orders to accompany the Bill introduced under the same short title in Session 1 and are reprinted with additions and alterations to reflect amendments at Consideration Stage of the Session 1 Bill. A Promoters' Memorandum, also provided under that Rule to accompany that earlier Bill, is printed separately as SP Bill 1-PM.

2. In addition to the accompanying documents published by the Parliament (referred to in paragraph 1 above), the following accompanying documents were prepared separately by the promoter at the time of introduction of the Session 1 Bill:

- an Assignment of Copyright/Licensing Agreement under Rule 9A.2.3(e).

Maps, plans, sections and an Environmental Statement were also prepared separately by the promoters (and copies provided to the Parliament) at that time, but are not accompanying documents under the Parliament's Standing Orders.

EXPLANATORY NOTES

INTRODUCTION

3. These Explanatory Notes have been prepared by John Kennedy & Co. on behalf of the promoters, Offshore Energy Resources Limited and Solway Offshore Limited, in order to assist the reader of the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

5. This Bill is promoted by Offshore Energy Resources Limited and Solway Offshore Limited acting jointly (and referred to in the Bill and these notes as “the undertaker”). The undertaker intends to build, own and operate an offshore wind farm on the Robin Rigg sand banks located 8.5 kilometres from Balcary Point in the Solway Firth. It will be connected by an underground cable with the English shore.

6. The undertaker is seeking a consent for the wind farm from the Scottish Ministers under section 36 of the Electricity Act 1989 (which requires the consent of the Scottish Ministers for the construction of an electricity generating station), and will also be seeking a consent under section 34 of the Coast Protection Act 1949 (which requires the consent of the Scottish Ministers for works on the seabed which may interfere with navigation). Separate consents will be sought from authorities in England in relation to so much of the works as are located in England.

7. The Bill confers statutory authority for any interference with the public rights of navigation and fishing in Scottish waters caused by the works (and to impose safeguards for the protection of navigation and fishing). Under the common law the public has a right of navigation on the sea and tidal lochs and rivers. The public also has a separate right to fish in such waters. There would be a potential interference with such rights during the construction of the works (by construction vessels and equipment) and once built, by the continuing presence in navigable waters of the towers of the wind turbines. The authority to interfere with public rights of navigation and fishing would not be conferred by any of the other consents being sought. The authority to be conferred by the Bill is limited to this purpose, and in particular the Bill does not purport to regulate matters relating to the generation or transmission of electricity and which would affect the operation of the Electricity Act 1989.

8. The works covered by the Bill will consist, in summary, of:

- up to 60 wind turbine generators mounted on 60 towers secured in foundations beneath the seabed;

- one electrical substation mounted on a platform secured in foundations beneath the seabed (containing transformers and helicopter landing deck);
- an anemometry mast fitted with anemometers and wind vanes (i.e. devices for measuring wind speeds and directions) and secured in foundations beneath the seabed or affixed to the electrical substation;
- a network of cables buried beneath the seabed connecting the wind turbine generators one to another and to the substation;
- to the extent that they are situated within Scotland, two armoured cables, buried beneath the seabed, connecting the substation to a landing point on the coast of England near Flimby.

COMMENTARY ON SECTIONS

Section 1 – Authority for works obstructing navigation and fishing

9. Subsection (1) authorises the undertaker to obstruct navigation and fishing in the Solway Firth to the extent required in order to construct and maintain the works described in the Bill. The principal works are described in sub-paragraphs (a) to (e) and comprise the turbines, substation, anemometry mast and submarine cables referred to above. Their locations are given in paragraph 1 of schedule 1 to the Bill (although section 2 of the Bill allows some scope for varying these locations). In addition subsection (1) refers to certain ancillary works (scour protection, and navigational warning or ship impact protection works) which may be required around the structures. The precise form or location of these ancillary works cannot at this stage be defined. They are matters of detailed design which will be affected by the requirements of the regulatory authorities under sections 3 or 4 of the Bill or under any consent conferred under section 34 of the Coast Protection Act 1949. By “scour protection” what is meant are works to prevent erosion around the base of the structures, which might consist of clay matting, boulders or concrete mattresses.

10. The works described in this section are referred collectively in the rest of the Bill as “the regulated works” and (other than the ancillary works) are shown on the map, plans and sections. The system of co-ordinates used for describing the locations of the works differ from the system of co-ordinates used in the Scottish Adjacent Waters Boundaries Order 1999 (S.I.1999/1126) in that it is based on the UK Ordnance Survey Grid rather than latitudes and longitudes, and the figures used are metres rather than degrees, minutes and seconds.

11. It should be noted that “maintain” is widely defined by section 7 of the Bill as including the retention of the works, and also their alteration, removal, reconstruction, relaying, replacing and, in so far as it may cause an obstruction to navigation or fishing, their operation. The terms “turbine”, “electrical substation”, “anemometry mast” and “Scottish waters” are also defined in section 7. Section 7 also explains that references to numbered turbines in the description of the works are references to the numbers assigned to the turbines by paragraph 1 of schedule 1.

12. The description of the works in subsection (1) allows some variance as to their height or depth (and note that by virtue of section 7(2) the particular numbers mentioned are to be treated as approximate rather than precise references). In part this is to allow some flexibility in the

detailed design of the works, but it also takes into account that the level of the seabed may change from time to time. However subsection (2) limits the flexibility by ensuring that a minimum distance of 18 metres is maintained between the bottom of the rotating blades of the turbines and sea level.

13. Subsection (3) spells out that nothing in the Bill authorises the generation or transmission of electricity. As mentioned above, the Bill only regulates matters relating to navigation and fishing; the generation and transmission of electricity is governed by the Electricity Act 1989.

Section 2 – Power to deviate from specified locations

14. Section 2 allows the undertaker when constructing and maintaining the turbines, substation or anemometry mast the flexibility to deviate laterally by up to 50 metres in any direction from the relevant location points given in schedule 1. This is to allow for the possibility that detailed survey of the seabed may result in the identification of problems requiring the position of any particular structure to be adjusted. No limit of deviation is required for the cables under the seabed because their locations are described in more general terms.

Section 3 – Provision against danger to navigation in case of damage, destruction or decay

15. This section and the following section are provisions for the safety of navigation based on provisions commonly included in legislation authorising harbour works. Section 3 addresses the situation where the works are damaged and requires the undertaker to notify the Commissioners of Northern Lighthouses and to take any steps the Commissioners may require to prevent danger to navigation.

16. The Commissioners of Northern Lighthouses are the general lighthouse authority for Scotland and the adjacent seas and islands, appointed under section 193(1)(b) of the Merchant Shipping Act 1995. Section 195 of that Act provides that general lighthouse authorities are responsible for all lighthouses, buoys and beacons within their area.

17. Subsection (2) makes it an offence for the undertaker to ignore or fail to comply with any of the provisions of section 3(1), unless the undertaker has a reasonable excuse. If convicted, the undertaker could be fined up to the maximum amount set out in the standard scale of fines for offences on summary conviction. The standard scale of fines is set out in section 225(2) of the Criminal Procedure (Scotland) Act 1995. The statutory maximum is currently £5,000. There is no limit on the fine which could be imposed on conviction on indictment. (The same maximum penalties apply to the offences created under sections 3, 4, 5 and 6.)

Section 4 – Permanent lights or buoys at or near regulated works

18. This section addresses the permanent lights or buoys that should be provided at the works for the purpose of preventing danger to navigation. An obligation is imposed on the undertaker to provide such lights and buoys in accordance with the requirements of the Commissioners of Northern Lighthouses. The Commissioners are given a discretion as to what form these should take, and a failure to comply with their directions will be an offence. It would however be a defence for the undertaker to prove that all due care was taken.

Section 5 – Exclusion zones for navigation, trawling and anchoring

19. This section provides for the creation of exclusion zones in which certain specified navigation and fishing activities are excluded. First, there will be an exclusion zone for navigation during the construction of the works (“the construction exclusion zone”). Secondly, there will be a zone in which fishing by trawling and the anchoring of any vessels are permanently excluded so long as the works remain in existence (“the trawling and anchoring exclusion zone”). Thirdly, navigation will be excluded on a permanent basis in an area of 50 metres in any direction around the structures regulated by the Bill (i.e. the turbines, the electrical substation and the anemometry mast).

20. The purpose of the construction exclusion zone is to address the hazard to mariners and to those constructing the works which would result from unauthorised persons navigating the area where construction vessels and equipment are being mobilised or used. The purpose of the permanent trawling and anchoring exclusion zone is to avoid the risks of nets, lines or anchors being caught in the works and causing both a safety risk to fishermen and mariners and a risk of damage to the works themselves. The purpose of the permanent 50-metre exclusion of navigation is to prevent collisions between vessels and the wind farm structures.

21. The area of the construction and trawling and navigation exclusion zones are described in schedules 2 and 3 to the Bill. This construction zone is based on a distance of 350 metres from the works and the trawling and anchoring zone is based on a distance of 100 metres from the works. If the works are constructed in two stages the area of the construction exclusion zone could be reduced. Accordingly, the definition of the construction zone in subsection (5) allows for a smaller exclusion zone than that described in schedule 2 to be created and publicised in accordance with subsection (2).

22. Under subsection (1) it would be an offence without reasonable excuse to navigate a vessel within the navigation exclusion zones or fish by trawling or anchor in the trawling and anchoring exclusion zone. However, by virtue of subsection (2) an exclusion zone is not to come into effect unless it has been advertised in advance (the manner of advertisement is defined in subsection (5)) and the undertaker has taken such steps to notify mariners as the Scottish Ministers may require. The undertaker is also required to advertise the termination of an exclusion zone. Examples of a “reasonable excuse” for being in an exclusion zone would be where a vessel was blown by a strong wind into an exclusion zone or was forced to navigate in such a zone in an emergency. Subsection (4) makes clear that the prohibition on navigating or anchoring is not to apply to vessels being used in the construction, maintenance or operation of the works.

23. The Scottish Ministers are mentioned in this section by virtue of their jurisdiction to supervise marine works under Part II of the Coast Protection Act 1949.

Section 6 – Active management system

24. This section requires that the wind farm will operate with an active management system settled after consultations with the relevant emergency service. The management system will include the provisions listed in subsection (2), its purpose being to minimise the risk of collisions between vessels and the rotating blades of the turbines. It will allow the relevant service to

require one or more of the turbines to be shut down immediately in a position which secures the maximum clearance between the blades of the turbines and the water level, on any occasion where there is a vessel in distress in the vicinity of the wind farm. Vessels are defined in section 10.

25. Subsection (4) makes it an offence for the undertaker to ignore or fail to comply with the active management system when operating the wind farm, unless the undertaker has a reasonable excuse.

Section 7 – Local consultation

26. Section 7 requires that the undertaker consult with local fishing and boating interests on proposals for lighting or marking of the works before submitting them to the Commissioners for Northern Lighthouses in accordance with section 4. This is to allow for the views of those directly affected by the proposals to be considered before finalising proposals with the relevant authority. Similarly, the undertaker is to consult local fisherman and yachtsmen before submitting proposals relating to the notification to mariners of the commencement or termination of exclusion zones under section 5.

Section 8 – Decommissioning

27. This section makes the exercise of powers under the Act and the operation of exclusion zones conditional on the undertaker providing from the outset and maintaining throughout the operational lifetime of the works a bond or similar financial instrument as insurance for the cost of decommissioning the works. The requirement to decommission and remove the works is imposed through the provisions of the lease which the Crown Estates Commissioners and the consent granted for the wind farm under section 36 of the Electricity Act 1989. The form of bond is to be approved by the Scottish Ministers, taking into account any decommissioning arrangements which the undertaker may have with the Crown Estates Commissioners. If the bond is not in place, the undertaker may not exercise the powers of the Act and would not therefore have any statutory authority for the works.

28. Section 6 gives the undertaker the right to enter into agreements to transfer any or all of its statutory powers under the Bill. Without such a provision the statutory authority conferred by section 1 of the Act would remain with the undertaker even if it transferred ownership of the works to another person (since statutory powers cannot be transferred without statutory authority). Subsection (2) makes clear that any such transfer of statutory powers could carry with it the corresponding statutory duties, such as obligations to comply with directions of the Commissioners for Northern Lighthouses under sections 3 and 4. For this reason subsection (3) requires notice of any transfer agreement to be given to the Commissioners. Notice is also required for the Scottish Ministers in view of their functions under section 5.

Section 9 – Transfer of powers

29. By virtue of section 7, references to the undertaker in the Bill are to be construed, following any such transfer of powers, as a reference to the person to whom these powers are transferred.

PROMOTERS' STATEMENT

NOTIFICATION TO PERSONS WITH INTEREST IN HERITABLE PROPERTY

30. This part of the statement is provided under Rule 9A.2.3(d)(i) of the Parliament's Standing Orders. That Rule applies because the Bill contains provisions which affect heritable property.

31. The only persons or classes of persons having an interest in heritable property affected by the proposed Bill for the purpose of Rule 9A.2.3(d)(i) are the Crown Estate Commissioners in respect of the seabed.

32. Notice of the intention to introduce a Private Bill by means of a letter in the form prescribed in Annex E to the Guidance on Private Bills was served on the Crown Estate Commissioners by Recorded Delivery post on 12 June 2002.

33. In addition a notification letter in the same form has been served on the Commissioners of Northern Lighthouses and the Scottish Ministers on 12 June as being bodies mentioned in the Bill.

NOTIFICATION TO AND CONSENT FROM MEMBERS ETC.

34. The Bill is promoted by Offshore Energy Resources Limited and Solway Offshore Limited, both companies regulated by the Companies Act 1985. Rule 9A.2.3(d)(ii) therefore applies.

35. Consent for the promotion of the Bill was obtained by means of written resolutions signed in writing by all the members of Offshore Energy Resources Limited and Solway Offshore Limited dated 17 May 2002. No meeting of the companies or previous notice is required for such resolutions.

36. The text of the written resolutions is set out below:

Ordinary resolution of Solway Offshore Limited

We, TXU Europe Group plc, being the sole Member for the time being of the above-named company entitled to receive notice of and to attend and vote at General Meetings hereby pass the following resolution as a ordinary resolution and agree that the said resolution shall, pursuant to Regulation 53 of Table A in the Companies (Tables A to F) Regulations 1985 (which Regulation is embodied in the Articles of Association of the Company), for all purposes be as valid and as effective as if the same had been passed at a General Meeting of the Company duly convened and held—

Ordinary Resolution

“That the Company promote a Bill in the Scottish Parliament to regulate matters relating to navigation and fishing in connection with the provision of an offshore wind farm in navigable waters in the Solway Firth; and for connected purposes.”

**Written Resolution of the Members of Offshore Energy Resources Limited,
company number: 4150735**

We the undersigned, being all of the Shareholders of Offshore Energy Resources Limited, who at the date of this Resolution are entitled to attend and vote at a General Meeting of the Company, **RESOLVE**, in accordance with section 381A of the Companies Act 1985, to pass the following as a Written Resolution:

“That the Company promote a Bill in the Scottish Parliament to regulate matters relating to navigation and fishing in connection with the proposed Robin Rigg offshore wind farm in navigable waters in the Solway Firth.”

NOTIFICATION TO AND CONSENT FROM BODY AFFECTED

37. The Bill does not contain any provision conferring powers upon or modifying the constitution of any body corporate or unincorporated association named in the Bill but not being the promoters. Accordingly Rule 9A.2.3(d)(iii) does not apply.

ADVERTISEMENT OF INTENTION TO INTRODUCE THE BILL

38. Notice of the intention to introduce a Private Bill, in the form prescribed in Annex E to the Guidance on Private Bills, was published in the *Dumfries and Galloway Standard* on 12 and 19 June 2002 and in the *Galloway News* on 13 and 20 June 2002 and has been displayed from 12 June 2002 in the following Scottish Parliament Partner Libraries:

Ewart Library, Catherine Street, Dumfries, DG1 1JB

Stranraer Library, North Strand Street, Stranraer, DG9 7LD

OTHER ACCOMPANYING DOCUMENTS

39. The documents listed in paragraph 2 above may be inspected at the Scottish Parliament Partner Libraries mentioned above. Copies of these documents are available for purchase from the Natural Power Consultants Limited, The Green House, Forrest Estate, Dairy, Castle Douglas, DG7 3XS (tel no. 01644 430 008).

40. On 13 June 2002, the promoters made the following statement:

These documents relate to the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 15 May 2003

“We, Offshore Energy Resources Limited and Solway Offshore Limited, hereby undertake to send copies of the map, plans, sections and Environmental Statement accompanying the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill, together with any other documents relevant to the Bill submitted to the Parliament on or after introduction, to the premises determined by the Presiding Officer for the purpose of Rule 9A.4.2.”

PROMOTERS’ UNDERTAKING TO PAY COSTS

41. On 13 June 2002, the promoters made the following statement:

“We, Offshore Energy Resources Limited and Solway Offshore Limited, hereby undertake to pay any costs that may be incurred by the Scottish Parliamentary Corporate Body during the passage of the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill in respect of the matters determined by that Body under Rule 9A.2.3(d)(vi) of the Parliament’s Standing Orders.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

42. On 15 May 2003, the Presiding Officer (George Reid) made the following statement:

“In my view, the provisions of the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Robin Rigg Offshore Wind Farm (Navigation and Fishing)
(Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 15 May 2003*

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