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STATUTORY INSTRUMENTS

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**2017 No. 433**

**The Keuper Underground Gas Storage Facility Order 2017**

**PART 2**

**PRINCIPAL POWERS**

**Development consent for authorised development etc.**

3.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2, the undertaker is granted development consent for the authorised development, in Schedule 1, to be carried out within the Order limits.

(2) In constructing the authorised development, the undertaker may deviate laterally from the lines or situations shown on the works plans within the limits of the deviation relating to that work shown on those plans.

**Maintenance of authorised development**

4. The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

**Authorisation of Use**

5.—(1) Subject to the provisions of this Order and to the requirements the undertaker may operate and use the authorised development.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a permit or licence under any legislation that may be required from time to time to authorise the operation of an underground gas storage facility.

**Benefit of Order**

6.—(1) Subject to article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply where the consent granted by this Order is expressed to be for the benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

**Consent to transfer benefit of Order**

7.—(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations (including development consent obligations within the meaning of section 106A of the 1990 Act) as would apply under this Order if those benefits or rights were exercised by the undertaker.

### **Defence to proceedings in respect of statutory nuisance**

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(1)</sup> (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order may be made, and no fine may be imposed, under section 82(2) of that Act if:

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites) or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974<sup>(2)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority pursuant to requirement 5; or
  - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (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) of the Control of Pollution Act 1974 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 development.

### **Guarantees in respect of payment of compensation**

9.—(1) The undertaker must not begin to exercise the powers in articles 10 to 31 of this Order in relation to any land unless it has first put in place either—

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(1) 1990 c. 43; section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), section 106 of and Schedule 17 to the Environment Act 1995 (c. 25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are other amendments to this section which are not relevant to this Order.

(2) 1974 c. 40; section 61 is amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
  - (b) an alternative form of security for that purpose which has been approved by the Secretary of State.
- (2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.