

STATUTORY INSTRUMENTS

2020 No. 847

The Immingham Open Cycle Gas Turbine Order 2020

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Immingham Open Cycle Gas Turbine Order 2020 and comes into force on 1st September 2020.

Commencement Information

II Art. 1 in force at 1.9.2020, see [art. 1](#)

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961 ^{M1};

“the 1965 Act” means the Compulsory Purchase Act 1965 ^{M2};

“the 1980 Act” means the Highways Act 1980 ^{M3};

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981 ^{M4};

“the 1984 Act” means the Road Traffic Regulation Act 1984 ^{M5};

“the 1990 Act” means the Town and Country Planning Act 1990 ^{M6};

“the 1991 Act” means the New Roads and Street Works Act 1991 ^{M7};

“the 2008 Act” means the Planning Act 2008 ^{M8};

“access and rights of way plans” means the plans which are certified as the access and rights of way plans by the Secretary of State under article 39 [^{F1}(certification of plans etc.) for] the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act and further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

“Anglian Water” means Anglian Water Services Limited (company number 2366656) whose registered address is Lancaster House Lancaster Way, Ermine Business Park, Huntingdon, Cambridge, United Kingdom PE29 6XU;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“book of reference” means the document of that description set out in Schedule 11 [F¹(documents and plans to be certified)] certified by the Secretary of State as the book of reference under [F¹article 39 (certification of plans etc.)] for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“commence” means to carry out any material operation, as defined in section 155 (when development begins) of the 2008 Act, comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of testing all systems and components of the authorised development (which are installed or in relation to which installation is nearly complete) in order to ensure that they, and the authorised development as a whole, function in accordance with the plant design specifications and the undertaker’s operational and safety requirements [F²and the words “commission” and “commissioned” and cognate expressions are to be construed accordingly;]

“commitments register” means the plans which are certified as the access and rights of way plans by the Secretary of State under article 39 [F¹(certification of plans etc.) for] the purposes of this Order;

“date of completion of construction” means the date on which the construction of the authorised development is complete including rectification of any construction defects, landscaping and reinstatement works;

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis, but excluding the generation of power during commissioning;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means provided it is in electronic form;

“emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that, in the reasonable opinion of the undertaker, would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action;

“the environmental statement” means the statement certified as the environmental statement by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“flood risk assessment” means the document certified as the flood risk assessment by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“framework biodiversity enhancement and management plan” means the plan which is certified as the framework biodiversity enhancement and management plan by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this [F³Order] ;

“framework construction environmental management plan” means the plan which is certified as the framework construction environmental management plan by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“framework construction traffic management plan” means the plan which is certified as the framework construction traffic management plan by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“framework construction worker travel plan” means the plan which is certified as the framework construction worker travel plan by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“framework written scheme of investigation” means the documents which are certified as the framework written scheme of investigation documents by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“indicative lighting strategy” means the documents which are certified as the indicative lighting strategy documents by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“land plans” means the plans which are certified as the land plans by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“limits of deviation” means in respect of numbered works 1, 2, 3, 4, 5 and 6 the outer limits of the corresponding numbered area shown on the works plan;

“maintain” includes, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development provided that such activities are not likely to give rise to any significant adverse effects that have not been assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“National Grid” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH and/or National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH as the context requires;

“Network Rail” means Network Rail Infrastructure Limited (Company Registration Number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown coloured pink, blue and yellow on the land plans and described in the book of reference;

“Order limits” means the Order limits shown on the works plans;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981 ^{M9};

“relevant planning authority” means the local planning authority for the land in question, being North Lincolnshire Council, or any successor to it as planning authority;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers' land) of the 2008 Act;

“statement to inform appropriate assessment” means statement to inform appropriate assessment which are certified as by the Secretary of State under article 39 (certification of plans etc.) for the purposes of this Order;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means VPI Immingham B Limited or the person who for the time being has the benefit of this Order in accordance with articles 6 (benefit of this Order) and 7 (consent to transfer benefit of the Order);

“VPI Immingham B Limited” means VPI Immingham B Limited (Company number 10630563) whose registered office is at 4th Floor, Nova South, 160 Victoria Street, London, England, SW1E 5LB;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“works plans” means the plans of that description set out in Schedule 11.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plan and access and rights of way plan are to be taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans.

(6) The expression “includes” is to be construed without limitation.

(7) References in this Order to plots are references to the plots shown on the land plans and described in the book of reference.

Textual Amendments

- F1** Words in art. 2 substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)
- F2** Words in art. 2 inserted (1.2.2023) by [The Immingham Open Cycle Gas Turbine \(Amendment\) Order 2023 \(S.I. 2023/119\)](#), arts. 1, [3](#)
- F3** Word in art. 2 substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

Commencement Information

- I2** Art. 2 in force at 1.9.2020, see art. 1

Marginal Citations

- M1** 1961 c.33.
M2 1965 c.56.
M3 1980 c.66.
M4 1981 c.66.
M5 1984 c.27.
M6 1990 c.8.
M7 1991 c.22.

M8 2008 c.29.

M9 1981 c.67.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

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

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation shown for each work number on the works plans.

Commencement Information

I3 Art. 3 in force at 1.9.2020, see [art. 1](#)

Maintenance of authorised development

4.—(1) 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.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Commencement Information

I4 Art. 4 in force at 1.9.2020, see [art. 1](#)

Operation of authorised development

5.—(1) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of the generating station.

Commencement Information

I5 Art. 5 in force at 1.9.2020, see [art. 1](#)

Benefit of this Order

6. Subject to article 7 (consent to transfer benefit of this Order), the provisions of this Order have effect solely for the benefit of VPI Immingham B Limited save for Work No. 5, for which the provisions of this Order have effect for the benefit of VPI Immingham B Limited and National Grid.

Commencement Information

I6 Art. 6 in force at 1.9.2020, see [art. 1](#)

Consent to transfer benefit of this Order

- 7.—(1) Subject to paragraph (4), the undertaker may—
- (a) transfer to another person (“the transferee”) 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 agreed in writing 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 a transfer or grant 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 as would apply under this Order if those benefits or rights were exercised by the undertaker.
- (4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—
- (a) the transferee or lessee is—
 - (i) the holder of a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989^{M10} or section 7 (licensing of public gas transporters) of the Gas Act 1986^{M11}; or
 - (ii) in relation to a transfer or a lease of any works within a highway, a highway authority responsible for the highways within the Order land; or
 - (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.
- (5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State and National Grid in writing before transferring or granting a benefit referred to in paragraph (1).
- (6) The notification referred to in paragraph (5) must state—
- (a) the name and contact details of the person to whom the benefit of the powers are to be transferred or granted;
 - (b) subject to paragraph (9), the date on which the transfer is expected to take effect;
 - (c) the powers to be transferred or granted;
 - (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that are to apply to the person exercising the powers transferred or granted; and

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The undertaker must notify National Grid on seeking the consent of the Secretary of State referred to in paragraph (4).

(8) The notification referred to in paragraph (7) must comply with the requirements in paragraph (6).

(9) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(10) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers are to be transferred or granted as specified in that notice.

Commencement Information

I7 Art. 7 in force at 1.9.2020, see [art. 1](#)

Marginal Citations

M10 1989 c.29. Section 6 was amended by section 30 of the [Utilities Act 2000 \(c.27\)](#), and by section 89(3) of the [Energy Act 2004 \(c.20\)](#). There are other amendments to this section that are not relevant to this Order.

M11 1986 c.44. Section 7 was amended by section 5 of the [Gas Act 1995 \(c.45\)](#) and section 76(2) of the [Utilities Act 2000 \(c.27\)](#). There are other amendments to the section that are not relevant to this Order.

PART 3

STREETS

Power to alter layout etc. of streets

8.—(1) The undertaker may for the purposes of the authorised development alter the layout of, or carry out any works in, the street in the manner specified in relation to that street in column (3) of Schedule 3 (streets subject to street works).

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraph (3), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing places.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(4) Paragraph (3) does not apply where the undertaker is the street authority for a street in which the works are being carried out.

Commencement Information

I8 Art. 8 in force at 1.9.2020, see [art. 1](#)

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Commencement Information

19 Art. 9 in force at 1.9.2020, see [art. 1](#)

Construction and maintenance of new or altered means of access

10.—(1) Those parts of each means of access specified in Part 1 of Schedule 4 (access) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 4 (access) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Commencement Information

I10 Art. 10 in force at 1.9.2020, see [art. 1](#)

Temporary prohibition or restriction of use of streets

11.—(1) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the street specified in column (2) of Schedule 5 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

- (5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—
 - (a) the street specified in paragraph (4) without first consulting the street authority; and
 - (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in the case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Commencement Information

I11 Art. 11 in force at 1.9.2020, see [art. 1](#)

Access to works

- 12.** The undertaker may, for the purposes of the authorised development—
 - (a) form and lay out the means of access, or improve existing means of access, in the locations specified in Schedule 3 (streets subject to street works); and

- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Commencement Information

I12 Art. 12 in force at 1.9.2020, see [art. 1](#)

Agreements with street authorities

- 13.**—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) construction of any new street including any structure carrying the street;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
 - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
 - (e) the execution in the street of any of the authorised development;
 - (f) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing publicly maintainable highway; or
 - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway; and
 - (g) any such works as the parties may agree.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Commencement Information

I13 Art. 13 in force at 1.9.2020, see [art. 1](#)

Traffic regulation

14.—(1) [^{F4}Subject to paragraphs (2) and (3)] and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction of the authorised development, at any time prior to the date that is 12 months after the date of final commissioning—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
 - (b) make provision as to the direction or priority of vehicular traffic on any road,
- either at all times or at times, on days or during such periods as may be specified by the undertaker.

- (2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—
- (a) given not less than four weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
 - (b) advertised its intention in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).
- (3) Any prohibition, restriction or other provision made by the undertaker under article 11 (temporary prohibition or restriction of use of streets) or paragraph (1) of this article has effect as if duly made by, as the case may be—
- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places)^{M12} of the 1984 Act,
- and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004^{M13}.
- (4) In this article—
- (a) subject to sub-paragraph (b), expressions used in it and in the 1984 Act have the same meaning; and
 - (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

Textual Amendments

- F4** Words in art. 14(1) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

Commencement Information

- I14** Art. 14 in force at 1.9.2020, see [art. 1](#)

Marginal Citations

- M12** Relevant amendments to section 32 were made by the 1991 Act section 168(1), Schedule 8, paragraph 39.
- M13** [2004 c.18](#).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

15.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991^{M14}.

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) This article does not authorise any water discharge activities or groundwater activities for which an environmental permit would be required pursuant to regulation 12(1) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016^{M15}.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964^{M16}, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other terms and expressions, with the exception of the term “watercourse”, used both in this article and in the Water Resources Act 1991^{M17} have the same meaning as in that Act.

Commencement Information

I15 Art. 15 in force at 1.9.2020, see [art. 1](#)

Marginal Citations

M14 1991 c.56. Section 106 was amended by sections 35(8)(a) and 43(2) and paragraph 1 of Schedule 2 to the [Competition and Service \(Utilities\) Act 1992 \(c.43\)](#) and sections 36(2) and 99(2), (4), and (5) of the [Water Act 2003 \(c.37\)](#).

M15 S.I. 2016/1154.

M16 1964 c.40. Paragraph 9B was inserted into Schedule 2 by paragraph 9 of Schedule 3 of the [Transport and Works Act 1992 \(c.42\)](#).

M17 1991 c.57.

Authority to survey and investigate the land

16.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or on any land which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required on entering the land, produce written evidence of their authority to do so; and

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Commencement Information

I16 Art. 16 in force at 1.9.2020, see [art. 1](#)

Removal of human remains

17.—(1) Before the undertaker carries out any part of the authorised development or works which will or may disturb any human remains in the Order land it must remove those human remains from the Order land, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order land the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the ^{F5}authorised development]; and

(b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium ^{F6}...

^{F7} ... and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the Order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857 ^{M18} is not to apply to a removal carried out in accordance with this article.

Textual Amendments

- F5** Words in art. 17(2)(a) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, **Sch.**

- F6** Words in art. 17(5)(b) omitted (17.5.2021) by virtue of [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)
- F7** Words in art. 17(5) omitted (17.5.2021) by virtue of [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

Commencement Information

- I17** Art. 17 in force at 1.9.2020, see art. 1

Marginal Citations

- M18** [1857 c.81](#). Substituted by Church of England (Miscellaneous Provisions) Measure [2014 No. 1](#) s.2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in SI [2014/2077](#) Sch.1 paras 1 and 2).

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or as is incidental to it.

(2) This article is subject to article 21 (compulsory acquisition of rights etc.) and article 27 (temporary use of land for carrying out the authorised development).

Commencement Information

- I18** Art. 18 in force at 1.9.2020, see [art. 1](#)

Power to override easements and other rights

19.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

caused by the carrying out or use of the authorised development and the operation of section 158 (benefit of order granting development consent) of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the use of land arising by virtue of a contract.

(4) Section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

Commencement Information

I19 Art. 19 in force at 1.9.2020, see [art. 1](#)

Time limit for exercise of authority to acquire land compulsorily

20.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of [^{F8}the 1981 Act as applied by article 23] (application of the 1981 Act).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Textual Amendments

F8 Words in [art. 20\(1\)\(b\)](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), [art. 1](#), [Sch.](#)

Commencement Information

I20 Art. 20 in force at 1.9.2020, see [art. 1](#)

Compulsory acquisition of rights etc.

21.—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose such restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In respect of such parts of the Order land that are shown edged red and shaded blue on the land plans, the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new class of rights and impose the restrictions as described in Table 6 of Schedule 6 (land in which only new rights etc. may be acquired).

(3) Subject to section 8 (provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for the creation of new rights and [^{F9}imposition of new restrictive covenants]), where the undertaker creates or acquires a right over land or imposes a restrictive covenant under paragraph (1) or (2), the undertaker is not to be required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and [^{F10}imposition of new restrictive covenants]) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant .

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of

a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Subject to the modifications set out in Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

Textual Amendments

- F9** Words in art. 21(3) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)
- F10** Words in art. 21(4) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

Commencement Information

- I21** Art. 21 in force at 1.9.2020, see art. 1

Private rights

22.—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over any part of the Order land that is owned by, vested in or acquired by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights and where the undertaker gives notice of such extinguishment.

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 29 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land;
- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs are not to apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested, belongs or benefits.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, restrictions right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Commencement Information

I22 Art. 22 in force at 1.9.2020, see [art. 1](#)

Application of the 1981 Act

23.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) [F11The 1981 Act], as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act) for subsection 2 there is substituted—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

(5) Omit section 5A (time limit for general vesting declaration).

(6) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “ section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article

20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 2020 ”.

(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “ section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008 ”.

(8) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 24(3) (acquisition of subsoil only) of the Immingham Open Cycle Gas Turbine Order 2020, which excludes the acquisition of subsoil only from this Schedule.”

(10) References to the 1965 Act in [F12the 1981 Act] must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 25 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Textual Amendments

F11 Words in art. 23(2) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, Sch.

F12 Words in art. 23(10) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, Sch.

Commencement Information

I23 Art. 23 in force at 1.9.2020, see art. 1

Acquisition of subsoil only

24.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) and paragraphs (1) and (2) of article 21 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Commencement Information

I24 Art. 24 in force at 1.9.2020, see [art. 1](#)

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “ section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 2020 ”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “ under that provision ”; and
- (b) in subsection (2), after “land” insert “ under that provision ”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “ article 20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 2020 ”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 24(3)(acquisition of subsoil only) of the Immingham Open Cycle Gas Turbine Order 2020, which excludes the acquisition of subsoil only from this Schedule”; and

(b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 27 (temporary use of land for carrying out the authorised development) or article 28 (temporary use of land for maintaining the authorised development) of the Immingham Open Cycle Gas Turbine Order 2020.”.

Commencement Information

I25 Art. 25 in force at 1.9.2020, see [art. 1](#)

Rights under or over streets

26.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order land as may be required for the purposes of the authorised

development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Commencement Information

I26 Art. 26 in force at 1.9.2020, see [art. 1](#)

Temporary use of land for carrying out the authorised development

27.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take possession of—
 - (i) so much of the land specified in column (1) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule;
 - (ii) any other part of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land;
- (d) construct any works specified in relation to that land in column (2) of Schedule 8; and
- (e) carry out or construct any other mitigation works.

(2) Before taking temporary possession of land for a period of time by virtue of sub-paragraph (1) the undertaker must give a notice of intended entry to each of the owners and occupiers of the land, so far as known to the undertaker after making diligent inquiry.

(3) The notice in paragraph (2) must specify—

- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of three months beginning with the day on which the notice is given;

- (b) subject to paragraph (4) the period for which the undertaker is to take temporary possession of the land,

provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of [^{F13}the 1981 Act or] has otherwise acquired the land subject to temporary possession.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or any debris removed under this article.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker must not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(10) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in article 21 (compulsory acquisition of rights etc.); or
- (b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 24 (acquisition of subsoil only) or article 26 (rights under or over streets).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8.

(14) The provisions of the Neighbourhood Planning Act 2017 ^{M19} do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the

authorised development and other development or works necessary for the authorised development within the Order land.

Textual Amendments

F13 Words in art. 27(4)(b) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

Commencement Information

I27 Art. 27 in force at 1.9.2020, see art. 1

Marginal Citations

M19 [2017 c.20](#).

Temporary use of land for maintaining the authorised development

28.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any of the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Before taking temporary possession of land for a period of time by virtue of paragraph (1) the undertaker must give notice of intended entry to each of the owners and occupiers of the land, so far as known to the undertaker after making diligent inquiry.

(4) The notice in paragraph (3) must specify—

- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of three months beginning with the day on which the notice is given; and
- (b) subject to sub-paragraph (5) the period for which the undertaker is to take temporary possession of the land,

provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “the maintenance period” means the period of one year beginning with the date of final commissioning.

(13) The provisions of the Neighbourhood Planning Act 2017 ^{M20} do not apply insofar as they relate to temporary possession of land under this article in connection with the maintenance of the authorised development and other development necessary for the authorised development within the Order land.

Commencement Information

I28 Art. 28 in force at 1.9.2020, see [art. 1](#)

Marginal Citations

M20 [2017 c.20](#).

Statutory undertakers

- 29.** Subject to the provisions of Schedule 9 (protective provisions), the undertaker may—
- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
 - (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land; and
 - (c) create and acquire compulsorily rights or impose restrictions over any Order land belonging to statutory undertakers.

Commencement Information

I29 Art. 29 in force at 1.9.2020, see [art. 1](#)

Apparatus and rights of statutory undertakers in streets

30. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 8 (power to alter layout etc. of streets), article 9 (street works), article 10 (construction and maintenance of new or altered means of access) or article 11 (temporary prohibition or restriction of use of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

Commencement Information

I30 Art. 30 in force at 1.9.2020, see [art. 1](#)

Recovery of costs of new connections

31.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communication provider” has the same meaning as in section 151(1) (interpretation of chapter 1) of the Communications Act 2003 ^{M21}; and

“public utility undertaker” has the same meaning as in the 1980 Act.

Commencement Information

I31 Art. 31 in force at 1.9.2020, see [art. 1](#)

Marginal Citations

M21 2003 c.21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations [S.I. 2011/1210](#).

PART 6

OPERATION

Felling or lopping of trees

32.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order land or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined [^{F14}under Part 1 of the 1961 Act].

Textual Amendments

F14 Words in [art. 32\(3\)](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), [art. 1](#), [Sch.](#)

Commencement Information

I32 Art. 32 in force at 1.9.2020, see [art. 1](#)

Protective works to buildings

33.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits or which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning.

(3) Subject to paragraph (5), for the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5) (a),(c) or (d) , the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient

to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by the reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within a period of five years beginning with the date of final commissioning it appears that the protective works are inadequate to protect the building against damage caused by construction, operation or maintenance of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the Planning Act 2008.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in the case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, operation and maintenance or use of the authorised development;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation and maintenance or use of the authorised development; and
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article, to the same extent as it applies to the compulsory acquisition of land under this ^{F15}Order] by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Textual Amendments

F15 Word in art. 33(12) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, Sch.

Commencement Information

I33 Art. 33 in force at 1.9.2020, see art. 1

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

34.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, 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) No enactment or rule of law to which paragraph (2) applies is to apply 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.

Commencement Information

I34 Art. 34 in force at 1.9.2020, see [art. 1](#)

Operational land for purposes of the 1990 Act

35. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

Commencement Information

I35 Art. 35 in force at 1.9.2020, see [art. 1](#)

Defence to proceedings in respect of statutory nuisance

36.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990 ^{M22} in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health) of that Act no order is to 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 ^{M23}; or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) [^{F16}the defendant shows that the nuisance] is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) 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.

Textual Amendments

F16 Words in [art. 36\(1\)\(b\)](#) inserted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), [art. 1](#), [Sch.](#)

Commencement Information

I36 Art. 36 in force at 1.9.2020, see [art. 1](#)

Marginal Citations

M22 [1990 c.43](#). Section 82 was amended by section 103 of the [Clean Neighbourhoods and Environment Act 2005 \(c.16\)](#); Section 79 was amended by sections 101 and 102 of the same Act.

M23 [1974 c.40](#). Section 60 was amended by section 7(3)(a)(4)(g) of the [Public Health \(Control of Disease\) Act 1984 \(c.22\)](#) and section 112(1)(3), paragraphs 33 and 35(1) of Schedule 17, and paragraph 1(1) (xxvii) of Schedule 16 to the [Electricity Act 1989 \(c.29\)](#); Section 61 was amended by section 133(2) and Schedule 7 to the [Building Act 1984 \(c.55\)](#), [paragraph 1](#) of Schedule 24 to the [Environment Act 1995 \(c.25\)](#), and section 162(1) of and paragraph 15(3) of Schedule 15 to the [Environmental Protection Act 1990 \(c.43\)](#).

Protective provisions

37. Schedule 9 (protective provisions) has effect.

Commencement Information

I37 Art. 37 in force at 1.9.2020, see [art. 1](#)

Procedure in relation to certain approvals

38.—(1) Where an application is made to, or a request is made of, the relevant planning authority, highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 9 (protective provisions) for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Schedule 10 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 10 and where stated to the contrary if, within eight weeks (or such longer period as may be agreed with the undertaker in writing) after the application or request has been submitted to an authority, beneficiary of protective provisions or an owner as referred to in paragraph (1) of this article it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) The procedure set out in paragraph 1(3) of Schedule 10 has effect in relation to any refusal by an authority, beneficiary of protective provisions, or an owner as referred to in paragraph (1) of this article to any consent, agreement or approval required under this Order, including such as may be required pursuant to the protective provisions contained within Schedule 9 (protective provisions).

(6) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

Commencement Information

I38 Art. 38 in force at 1.9.2020, see [art. 1](#)

Certification of plans etc.

39.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in Table 8 of Schedule 11 (documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Commencement Information

I39 Art. 39 in force at 1.9.2020, see [art. 1](#)

Service of notices

40.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) 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 7 (references to service by post) of the Interpretation Act 1978^{M24} as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the [^{F17}secretary or clerk] of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that 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 an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person 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 the 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 to be taken to be fulfilled only where—
- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
 - (b) the notice or document is capable of being accessed by the recipient;
 - (c) the notice or document is legible in all material respects; and
 - (d) in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient 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) Any consent to the use of an electronic transmission by a person may be revoked by that person 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) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.
- (10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of notice or document in printed form.

Textual Amendments

F17 Words in [art. 40\(3\)\(a\)](#) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), [art. 1](#), [Sch.](#)

Commencement Information

I40 Art. 40 in force at 1.9.2020, see [art. 1](#)

Marginal Citations

M24 [1978 c.30](#). Section 7 was amended by section 144 and paragraph 19 of Schedule 10 to the [Road Traffic Regulation Act 1984 \(c.27\)](#). There are other amendments not relevant to this Order.

Amendment and modification of statutory provisions

41. The Able Marine Energy Park Development Consent Order 2014 is amended for the purposes of this Order only as set out in Schedule 13 (modifications to the Able Marine Energy Park Development Consent Order 2014).

Commencement Information

I41 Art. 41 in force at 1.9.2020, see [art. 1](#)

Arbitration

42. 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 Secretary of State.

Commencement Information

I42 Art. 42 in force at 1.9.2020, see [art. 1](#)

Funding

43.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place, following approval by the Secretary of State, either—

- (a) a guarantee (and the amount of that guarantee) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security (and the amount of that security) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 21 (compulsory acquisition of rights etc.);
- (c) article 22 (private rights);
- (d) article 24 (acquisition of subsoil only);
- (e) article 26 (rights under or over streets);
- (f) article 27 (temporary use of land for carrying out the authorised development);
- (g) article 28 (temporary use of land for maintaining the authorised development); and
- (h) article 29 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security 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.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Commencement Information

I43 Art. 43 in force at 1.9.2020, see [art. 1](#)

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Department for Business, Energy and Industrial
Strategy

Gareth Leigh
Head of Energy Infrastructure Planning

Changes to legislation:

There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020.