
STATUTORY INSTRUMENTS

2022 No. 1396

**The Keadby 3 (Carbon Capture Equipped
Gas Fired Generating Station) Order 2022**

PART 7

MISCELLANEOUS AND GENERAL

Protective provision

35. Schedule 10 (protective provisions) has effect.

Restoration works

36.—(1) If the authorised works have not been commenced within the period specified in Requirement 2 the undertaker will within 6 months from the expiry of such period—

- (a) submit to the relevant planning authority for its written approval a scheme for the removal of the haul road, including its road bridges and associated infrastructure and restoration of the land, including the incorporation of biodiversity enhancements and a timetable for implementation; and
- (b) submit to the relevant planning authority for its written approval a scheme for the restoration of the land described in the Palfrey laydown plans to its former condition.

(2) Both schemes shall be implemented by the undertaker as approved and thereafter retained unless agreed otherwise with the relevant planning authority.

Application of landlord and tenant law

37.—(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) Accordingly, no such enactment or rule of law applies 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.

Operational land for purposes of the 1990 Act

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

Deemed marine licence under the Marine and Coast Access Act 2009

39. The undertaker is deemed to have been granted the licence under Part 4 of the 2009 Act contained in Schedule 13 to this Order, to carry out the works and make deposits described in that licence, and subject to the licence conditions which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

Defence to proceedings in respect of statutory nuisance

40.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁾ (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (b), (c), (d), (e), (fb), (g) or (h) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) 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⁽²⁾; or
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) 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.

Certification of plans etc.

41.—(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 the table in Schedule 12 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

(1) 1990 c. 43. This section was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

(2) 1974 c. 40. Words in this section were repealed by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55) and by section 120(3) of, and paragraph 1 of Schedule 24 to, the Environment Act 1995 (c. 25) and inserted by section 162(1) of, and paragraph 15(3) of Schedule 15 to, that Act.

(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.

Service of notices

42.—(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 of the Interpretation Act 1978⁽³⁾ (references to service by post) 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 secretary or clerk of a 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) the notice or document is 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—

(3) 1978 c. 30.

- (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 a notice or document in printed form.

Procedure in relation to certain approvals etc.

- 43.**—(1) Where an application is made to or request is made of any authority or body named in any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.
- (2) Schedule 9 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

Arbitration

- 44.**—(1) 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 or a person appointed by the Secretary of State.
- (2) Any matter for which the consent or approval of the Secretary of State or the MMO is required under the provisions of this Order shall not be subject to arbitration pursuant to this article 44 (arbitration).

Guarantees in respect of payment of compensation

- 45.**—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—
- (a) a guarantee, the form and amount of which has been approved by the Secretary of State (or a person appointed by the Secretary of State) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
 - (b) an alternative form of security, the form and amount of which has been approved by the Secretary of State (or a person appointed by the Secretary of State) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph.
- (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 26 (rights under or over streets);
 - (e) article 27 (temporary use of land for carrying out the authorised development);
 - (f) article 28 (temporary use of land for maintaining the authorised development); and
 - (g) article 29 (statutory undertakers).

(3) 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 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.