
STATUTORY INSTRUMENTS

2024 No. 802

The Sunnica Energy Farm Order 2024

PART 6

MISCELLANEOUS AND GENERAL

Benefit of the Order

31. Subject to article 32 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer the benefit of the Order

32.—(1) Subject to the powers of this Order, the undertaker may—

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

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (8), are to include references to the transferee or lessee.

(3) 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 the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act; or
- (b) the time limits for 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 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in full and final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(5) The notification referred to in paragraph (4) must state—

- (a) the name and contact details the person to whom the benefit of the powers will be transferred or granted;

- (b) subject to paragraph (6), the date on which the transfer will take effect;
 - (c) the powers to be transferred or granted;
 - (d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will 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.
- (6) The date specified under paragraph (5)(b) must not be earlier than the expiry of 14 days from the date of the receipt of the notification.
- (7) The notification given must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notification.
- (8) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—
- (a) the benefit transferred or granted (“the transferred benefit”) must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
 - (b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and
 - (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant 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.
- (9) The undertaker must notify both Cambridgeshire County Council and Suffolk County Council in writing 14 days before and 14 days after transferring or granting a benefit referred to in paragraph (1).
- (10) The obligations of the undertaker under the Deed of Obligation are enforceable in accordance with article 45 (enforcement, modification and discharge of the Deed of Obligation) against any person to whom the power to construct or operate numbered works 1 and 2 has been transferred or granted under this article for so long as that person benefits from the power to construct or operate any of numbered works 1 and 2, and such transferee or lessee must be treated for all purposes as the undertaker who entered into the Deed of Obligation with the other parties to it.
- (11) The obligations of parties to the Deed of Obligation other than the undertaker are enforceable by any person to whom the power to construct or operate numbered works 1 and 2 has been transferred or granted under this article for so long as that person benefits from the power to construct or operate any of numbered works 1 or 2, and such parties must be treated for all purposes as parties who entered into the Deed of Obligation with the transferee or lessee.

Application of landlord and tenant law

33.—(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

34. 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 operational land) of the 1990 Act.

Felling or lopping of trees and removal of hedgerows

35.—(1) Subject to article 36 (trees subject to tree preservation orders), the undertaker may fell or lop any tree or shrub near any part of the authorised development or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

- (a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;
- (b) constituting a danger to persons using the authorised development; or
- (c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) or (4) the undertaker must—

- (a) do no unnecessary damage to any tree or shrub;
- (b) ensure all works are carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice provided these meet or exceed the appropriate British Standards;;
- (c) pay compensation to any person for any loss or damage arising from such activity; and
- (d) not breach of the provisions of the Wildlife and Countryside Act 1981(1) and the Conservation of Habitats and Species Regulations 2017(2) or any successor acts and regulations.

(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 under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of constructing the authorised development.

(5) The undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997(3).

(1) 1981 c. 69.
(2) S.I. 2017/1012.
(3) S.I. 1997/1160.

Trees subject to tree preservation orders

36.—(1) The undertaker may fell or lop any tree described in Schedule 15 (trees subject to tree preservation orders) and shown on the tree preservation order trees location plan or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Certification of plans and documents, etc.

37.—(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 at Schedule 10 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

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

Arbitration

38.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 11 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

Protective Provisions

39. Schedule 12 (protective provisions) has effect.

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(4) 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 purpose 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—

- (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.

Procedure in relation to certain approvals etc.

41.—(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) Subject to paragraph (4), Schedule 13 (procedure for discharge) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

(3) Schedule 13 (procedure for discharge) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 12 (protective provisions) or any dispute under article 15(6) (protective work to buildings) to which paragraph (4) applies.

(4) Subject to any other provision in this Order, any difference or dispute arising under any provision of Schedule 12 (protective provisions) or article 15(6) (protective work to buildings) must, unless otherwise agreed in writing between the undertaker and the party in question, be referred to and settled in arbitration by a single arbitrator to be agreed upon by the parties within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

Guarantees in respect of payment of compensation

42.—(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 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 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 17 (compulsory acquisition of land);
- (b) article 19 (compulsory acquisition of rights);
- (c) article 20 (private rights);
- (d) article 22 (acquisition of subsoil only);
- (e) article 23 (power to override easements and other rights);
- (f) article 25 (rights under or over streets);
- (g) article 26 (temporary use of land for constructing the authorised development);
- (h) article 27 (temporary use of land for maintaining the authorised development); and
- (i) article 28 (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.

Traffic regulation measures

43.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road is situated in, the undertaker may, for the purposes of construction, maintenance and decommissioning of the authorised development—

- (a) make provision, in respect of those lengths of road specified in column 2 of Part 1 of Schedule 14 (traffic regulation measures) imposing the temporary speed limit mentioned in column 3 of that Part of that Schedule;
- (b) make provision, in respect of those lengths of road specified in column 2 of Part 2 of Schedule 14 (traffic regulation measures), as to the direction of travel of vehicular traffic as specified in column 3 of that Part of that Schedule;
- (c) make provision, in respect of those lengths of road specified in column 2 of Part 3 of Schedule 14 (traffic regulation measures) temporarily closing that road to the classes of road user specified in column 3 of that Part of that Schedule; and
- (d) make provision temporarily suspending in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road is situated, the undertaker may for the purposes of construction, maintenance and decommissioning of the authorised development, temporarily place traffic signs and signals in the extents of the road specified in column 2 of Part 4 of Schedule 14 (traffic regulation measures) and, subject to the consent of the traffic authority in whose area the road is situated, the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016⁽⁵⁾.

(3) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the construction, maintenance or decommissioning of the authorised development—

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;
- (c) as to prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;
- (d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and
- (e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(4) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011⁽⁶⁾ when used in accordance with regulation 3(5) of those regulations.

(5) Prior to any application for the consent of the traffic authority under paragraphs (1) and (2), the undertaker must carry out 21 days consultation with affected highway users by means of site notices and local newspaper advertisement circulating in the area in which- the traffic regulation measures are proposed and must include a consultation report presenting the results of that consultation as part of its application for consent.

(6) Before exercising the power conferred by paragraph (3) the undertaker must—

- (a) consult the chief officer of police in whose area the road is situated; and

(5) [S.I. 2016/362](#).

(6) [S.I. 2011/935](#).

- (b) obtain the written consent of the traffic authority.
- (7) The undertaker must not exercise the powers conferred by paragraphs (1), (2) or (3) unless the undertaker has—
 - (a) given not less than 4 weeks' notice in writing to the chief officer of police in whose area the road is situated and to the traffic authority; and
 - (b) not less than 7 days before the provision is to take effect, published the undertaker's intention to make the provision in one or more newspapers circulating in the area in which any road to which the provision relates is situated.
- (8) Any provision made under the powers conferred by paragraphs (1) or (3) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (3).
- (9) Any provision made by the undertaker under paragraphs (1) or (3)—
 - (a) must be made by written instrument in such form as the undertaker considers appropriate;
 - (b) has effect as if duly made by the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify savings and exemptions to which the provision is subject; and
 - (c) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.

Crown Rights

- 44.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker to take, use, enter upon or in any manner interfere with any land or rights of any description—
- (a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
 - (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.
- (2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.
- (3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

Enforcement, modification and discharge of the Deed of Obligation

- 45.**—(1) The terms of the Deed of Obligation are enforceable by injunction.
- (2) An obligation in the Deed of Obligation may not be modified or discharged except—
- (a) by agreement between the undertaker and the beneficiary of the obligation, executed as a deed; or
 - (b) further to a determination by the Secretary of State under this article.
- (3) The undertaker may, at any time after the expiry of the period of five years beginning with the date on which the Deed of Obligation was first entered into, apply to the Secretary of State for the obligation—

- (a) to have effect subject to such modifications as may be specified in the application; or
 - (b) to be discharged, and must notify Suffolk County Council and Cambridgeshire County Council as soon as any such application is made.
- (4) An application under paragraph (3) for the modification of an obligation in the Deed of Obligation may not specify a modification imposing an obligation on any other person against whom the Deed of Obligation is enforceable.
- (5) Where an application is made to the Secretary of State under paragraph (3), the Secretary of State must consult Suffolk County Council and Cambridgeshire County Council and, taking into account their responses, may determine—
- (a) that the obligation must continue to have effect without modification;
 - (b) if the obligation no longer serves a useful purpose, that it must be discharged; or
 - (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it must have effect subject to those modifications,
- and must give notice of their determination to the undertaker, Suffolk County Council and Cambridgeshire County Council within three months of the application and provide full reasons for the decision.
- (6) Where the Secretary of State determines under this article that an obligation has effect subject to modifications specified in the application, the obligation as modified must be enforceable as if it had been entered into on the date on which notice of the determination was given to the undertaker, Suffolk County Council and Cambridgeshire County Council or such other date as the Secretary of State may determine.
- (7) An application to the Secretary of State under paragraph (3) must include the following information—
- (a) the name and address of the undertaker;
 - (b) sufficient information to enable identification of the obligation which the undertaker wishes to have modified or discharged;
 - (c) the undertaker’s reasons for applying for the modification or discharge of that obligation; and
 - (d) such other information as the Secretary of State considers necessary to enable them to determine the application.
- (8) Where it is proposed that Suffolk County Council or Cambridgeshire County Council is not to be a party to any deed entered into under paragraph (3)(a), the body not proposed to be a party must be provided with the information set out in paragraphs (7)(a) to (c), and be given not less than 21 days to make representations.
- (9) Section 84 of the Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to an obligation in the Deed of Obligation.
- (10) In this article “undertaker” means the undertaker authorised to construct or operate numbered works 1 and 2, being the undertaker bound by the Deed of Obligation.