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STATUTORY INSTRUMENTS

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**2015 No. 1570**

**The Progress Power (Gas Fired Power Station) Order 2015**

**PART 7**

**MISCELLANEOUS AND GENERAL**

**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.

**Cases in which land is to be treated as not being operational land**

**34.** Development consent granted by this Order insofar as it relates to numbered works 1, 2, 3A and 5 described in Schedule 1 is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (Cases in which land is to be treated as not being operational land).

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

**35.**—(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 (g) of section 79(1) of that Act (noise emitted from premises so

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(1) 1990 c.43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c.25). There are amendments to this Act which are not relevant to this Order.

as to be prejudicial to health or a nuisance) 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) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(2)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance 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 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), is not to 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.

### **Protective provisions**

**36.** Schedule 9 (protective provisions) has effect.

### **Certification of plans etc.**

**37.—**(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference;
- (b) the design principles statement;
- (c) the ecological management strategy;
- (d) the environmental statement;
- (e) the flood risk assessment;
- (f) the important hedgerow plan;
- (g) the land plans;
- (h) the landscape mitigation strategy;
- (i) the outline construction environment management plan;
- (j) the outline construction traffic management plan;
- (k) the outline landscaping plans;
- (l) the outline lighting strategy;
- (m) the rights of way, streets and access plan;
- (n) the stage 2 written scheme of archaeological investigation; and
- (o) the works plans

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(2) [1974 c.40](#). Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15(4) of Schedule 15 to, the Environmental Protection Act [1990, c.43](#). There are other amendments to the 1974 Act which are not relevant 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.

### **Service of notices**

**38.**—(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) 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 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 7 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.**

**39.**—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a traffic authority, a street authority, or the owner of a watercourse, sewer or drain 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 and must not be unreasonably withheld or delayed.

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

(3) Schedule 10 is to have effect in relation to all consents, agreements or approvals required from the relevant planning authority in respect of discharge of requirements listed in Schedule 2.

(4) Where an application is made to or request is made of the relevant planning authority for any consent, agreement or approval required or contemplated by article 13(c) (access to works) or requirement 6 (Highway accesses) of Schedule 2 to the Order, such application or request must at the same time be sent to the highway authority for its reference.

(5) Where an application is made to or request is made of the relevant planning authority for any consent, agreement or approval required or contemplated by any requirement where a third party is a consultee under that requirement, such application or request must at the same time be sent to that third party for its reference.

### **Arbitration**

**40.** 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.