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STATUTORY INSTRUMENTS

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**2017 No. 433**

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

**PART 6**

**MISCELLANEOUS AND GENERAL**

**Operational land for the purposes of the 1990 Act**

**32.** Development consent granted by this Order 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).

**Felling or lopping of trees or shrubs**

**33.—(1)** Save for trees planted in accordance with requirement 6 in Schedule 2 (requirements), the undertaker may, pursuant to the requirements in Schedule 2, 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—

- (a) from obstructing or interfering with the construction or maintenance 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 under Part 1 of the 1961 Act (determination of questions of disputed compensation).

**Protective provisions**

**34.** Schedule 9 (protective provisions) to this Order has effect.

**Certification of plans etc.**

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

- (a) the book of reference (document ref: 4.3);
- (b) the book of reference and land plans clarifications and errata (document ref:10.14);
- (c) the Order limits drawing nos: 13-03-01/HOL/24/100-107/B1;
- (d) the land plans drawing nos: 13-03-01/HOL/24/610-617/B1;

- (e) the works plans drawing nos: 13-03-01/HOL/24/500-506/B1, 13-03-01/HOL/24/509/B1, 13-03-01/HOL/24/510/B2, 13-03-01/HOL/24/511/B1, 13-03-01/HOL/24/512/B2 and 13-03-01/HOL/24/513-514/B1;
- (f) the street works and access plan drawing no.:13-03-01/HOL/24/413/B1;
- (g) the environmental statement (document refs: 6.1-6.3);
- (h) the environmental statement clarifications and errata (document ref: 10.13);
- (i) the elevation drawing nos::
  - (i) 13-03-01/HOL/24/236/B1;
  - (ii) 13-03-01/HOL/24/270/B4, 13-03-01/HOL/24/271/B2, 13-03-01/HOL/24/272/B1, 13-03-01/HOL/24//273/B2 and 13-03-01/HOL/24/274/B1; and
  - (iii) 13-03-01/HOL/24/278/B1;
- (j) the seismic survey report (document ref: 9.1);
- (k) the sub-surface safety assessment report (document ref: 9.2);
- (l) the preliminary study of gas design capacity (document ref: 9.3);
- (m) the landscaping plans drawing nos: 13-03-01/HOL/24/240-264/B1 and 13-03-01/HOL/24/266-268/B1;
- (n) the statutory undertakers' apparatus plan drawing no: 13-03-01/HOL/24/346/B1;
- (o) the routing plan drawing no: 13-03-01/HOL/24/405/B1; and
- (p) the draft CEMP and annexes 1 - 4 (document ref 6.5 rev4, August 2016),

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified under paragraph (1) is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Application of the Hedgerows Regulations 1997**

**36.** Regulation 6 of the Hedgerows Regulations 1997(1) is to be modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

- “(k) Or for carrying out development which has been authorised by a development consent pursuant to the Planning Act 2008”.

### **Procedure in relation to certain approvals etc.**

**37.** Where an application is made to or request is made of the relevant planning authority, a highway 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 this Order such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

### **Appeals relating to decisions under requirements**

**38.—**(1) Where the relevant planning authority—

- (a) refuses an application for any consent, agreement or approval of that authority required by a requirement listed in Schedule 2 (requirements) to this Order or grants that consent, agreement or approval subject to conditions; or

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(1) [S.I. 1997/1160](#). There are amendments to this Statutory Instrument which are not relevant to this Order.

- (b) does not give notice to the undertaker of its decision on an application for any consent, agreement or approval of that authority required by a requirement listed in Schedule 2 (requirements) of this Order within 16 weeks beginning with the day immediately following that on which the application is received by that authority or within such shortened or extended period as may at any time be agreed upon in writing between the undertaker and that authority,

Article 40 (arbitration) does not apply but the undertaker may by notice appeal to the Secretary of State.

(2) Any appeal to the Secretary of State under paragraph (1) must be made under Part III (control over development) of the 1990 Act as if the requirement in Schedule 2 (requirements) of this Order which is the subject of the appeal were a condition under subsection 78(1)(b) of the 1990 Act.

(3) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 7 of the Gas Act 1986(2).

#### **Application of landlord and tenant law.**

**39.**—(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 is to prejudice 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.

#### **Arbitration**

**40.** Without prejudice to article 38 (appeals relating to decisions under requirements), any difference or dispute under any provision of this Order, unless otherwise provided for, must 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 President of the Institution of Civil Engineers.

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(2) 1986 c. 44; section 7 is amended by section 5 of the Gas Act 1995 (c. 45), and sections 76 and 108 of the Utilities Act 2000 (c. 27).