
STATUTORY INSTRUMENTS

2017 No. 817

**The National Grid (Richborough Connection
Project) Development Consent Order 2017**

PART 6

MISCELLANEOUS AND GENERAL

Deemed marine licence

34. The undertaker is deemed to have been granted the licence contained in Schedule 9 (deemed marine licence) to this Order, to carry out the works and make the 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.

Application of landlord and tenant law

35.—(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

36. Development consent granted by this Order must 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 operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

37.—(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 as to be prejudicial to health or a nuisance) no order must 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 site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(2); 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—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with the Noise and Vibration Management Plan prepared under Requirement 5 of Schedule 3 (requirements) to this Order; or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (prior 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.

Temporary closure of, and works in, the river Stour

38.—(1) The undertaker may, in connection with the construction of the authorised development, temporarily interfere with the relevant part of the river.

(2) Without limitation on the powers conferred by paragraph (1) but subject to paragraph (4) the undertaker may, in connection with the construction of the authorised development—

- (a) temporarily moor or anchor barges or other vessels or craft in the relevant part of the river and may load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials in connection with the construction or maintenance of the authorised development; and
- (b) on grounds of health and safety only, temporarily close to navigation the relevant part of the river.

(3) The power conferred by paragraphs (1) and (2) shall be exercised in such a way which secures—

(1) 1990 c. 43. Section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), section 106 of, and Schedule 17 to, the Environment Act 1995 (c. 25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are other amendments to this Act which are not relevant to this Order.

(2) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.

- (a) that no more of the relevant part of the river is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure to navigation of the relevant part of the river becomes necessary, all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

(4) Any person who suffers loss as a result of the suspension of any private right of navigation under this article is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) In this article, “the relevant part of the river” means so much of the river Stour as is shown hatched in yellow on the access and rights of way and public rights of navigation plan.

Traffic regulation

39.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may at any time, for the purposes of the construction of the authorised development—

- (a) prohibit vehicular access, prohibit waiting of vehicles and regulate vehicular speed by imposing speed restrictions on vehicles in the manner specified in Part 1 of Schedule 12 (traffic regulation) on those roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule;
- (b) prohibit vehicular access and prohibit waiting of vehicles in the manner specified in Part 2 of Schedule 12 on those roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule; and
- (c) prohibit waiting of vehicles in the manner specified in Part 3 of Schedule 12 on the roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Part of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article 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 construction of the authorised development, at any time prior to when the authorised development first becomes operational—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the maximum speed, direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The undertaker must not exercise the powers in paragraphs (1) and (2) unless it has—

- (a) given not less than 28 days’ notice in writing of its intention so to do to the chief officer of police and 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 7 days of its receipt of notice of the undertaker's intention as provided for in subparagraph (a).
- (4) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (2)—
- (a) has effect as if duly made by—
- (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act (power of local authorities to provide parking places), and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 12 (traffic regulation) to which the prohibition, restriction or other provision is subject; and
- (b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004⁽³⁾ (road traffic contraventions subject to civil enforcement).
- (5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraphs (1) and (2) at any time prior to the part of the authorised development to which it relates being brought into operational use.
- (6) Before complying with the provisions of paragraph (3) the undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated.
- (7) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (8) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraphs (1) and (2) the traffic authority is deemed to have granted consent.

Felling or lopping of trees

- 40.**—(1) 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—
- (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 not cause any 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, must be determined under Part 1 of the 1961 Act.
- (4) Development consent granted by this Order is to be treated as planning permission pursuant to Part 3 of the 1990 Act for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012⁽⁴⁾.

⁽³⁾ 2004 c. 18.

⁽⁴⁾ S.I. 2012/605.

Trees subject to tree preservation orders

41.—(1) The undertaker may fell or lop any tree described in Schedule 13 (trees subject to Tree Preservation Orders) and identified on the Trees and Hedgerows to be Removed or Managed Plans, or cut back its roots, if it reasonably believes it to be necessary in order 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)—

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any damage arising from such activity; and
- (b) the duty in section 206(1) of the 1990 Act (replacement of trees) 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, will be determined under Part 1 of the 1961 Act.

Protection of interests

42. Schedule 14 (protective provisions) has effect.

Certification of plans, etc.

43.—(1) National Grid must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access and rights of way and public rights of navigation plans;
- (b) the book of reference;
- (c) the CEMP;
- (d) the Archaeological Mitigation Written Scheme of Investigation;
- (e) the Biodiversity Mitigation Strategy;
- (f) the Construction Traffic Management Plan;
- (g) the Public Rights of Way Management Plan;
- (h) the Outline Waste Management Plan;
- (i) the Noise and Vibration Management Plan;
- (j) the design drawings;
- (k) the land plans;
- (l) the location plan;
- (m) the special category land and crown land plans;
- (n) the extinguishment of easements, servitudes and other rights plans;
- (o) the traffic regulation order plans;
- (p) the Trees and Hedgerows to be Removed or Managed Plans; and
- (q) the works plans,

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.

Service of notices

44.—(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 written consent of the recipient and subject to paragraphs (5) 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⁽⁵⁾ (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 the 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 any 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 name or 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 a 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 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 7 days of receipt that the recipient requires a paper copy of all or 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 electronic communication given 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—

(5) 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 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.
- (10) In this article “legible in all material respects”, in relation to a notice or document, 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 regarding certain approvals, etc.

45.—(1) Where an application or request is submitted to a relevant planning authority, the 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 the Order such consent, agreement or approval, if given, must be given in writing, such agreement not to be unreasonably withheld.

(2) Schedule 4 (discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the Requirements, and any document referred to in any Requirement.

(3) The procedure set out in paragraphs 3, 4 and 5 of Schedule 4 (discharge of requirements) has effect in relation to any other consent, agreement or approval required under this Order where such consent, agreement or approval is granted subject to any condition to which the undertaker objects, or is refused or is withheld.

Amendment of local legislation

46.—(1) The local enactments specified in Part 1 of Schedule 15 (amendment of local legislation), and any byelaws or other provisions made under any of those enactments, and the local byelaws specified in Part 2 of that Schedule are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken;

action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

No double recovery

47. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Arbitration

48. Subject to article 45 (procedure regarding certain approvals, etc.) and except where otherwise expressly provided for in this Order or unless otherwise agreed between the parties, any difference under any provision of this Order 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 Secretary of State.