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## STATUTORY INSTRUMENTS

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# 2020 No. 419

## The Riverside Energy Park Order 2020

### PART 4

#### MISCELLANEOUS AND GENERAL

##### Application of landlord and tenant law

**36.**—(1) This article applies to any agreement entered into by the undertaker under article 9 so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(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) No enactment or rule of law to which sub-paragraph (2) applies is to apply 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.

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##### Commencement Information

**I1** Art. 36 in force at 1.5.2020, see [art. 1](#)

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

**37.** 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 not being operational land) of the 1990 Act.

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##### Commencement Information

**I2** Art. 37 in force at 1.5.2020, see [art. 1](#)

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

**38.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990 <sup>M1</sup> in relation to a

nuisance falling within paragraphs (c), (d), (e), (fb), (g) or (h) of section 79(1) (statutory nuisances and inspections therefor) of that Act 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 construction 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 <sup>M2</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) (prior consent for work on construction sites) 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.

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**Commencement Information**

**I3** Art. 38 in force at 1.5.2020, see [art. 1](#)

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**Marginal Citations**

**M1** 1990 c.43. Section 82 was amended by section 103 of the [Clean Neighbourhoods and Environment Act 2005 \(c.16\)](#); [section 79](#) was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

**M2** 1974 c.40.

**Protective provisions**

**39.** Schedule 10 (protective provisions) has effect.

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**Commencement Information**

**I4** Art. 39 in force at 1.5.2020, see [art. 1](#)

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**Certification of plans etc.**

**40.**—(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 referred to in Schedule 11 (documents and plans to be certified) to this Order for certification that they are true copies of those documents.

(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.

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**Commencement Information**

**I5** Art. 40 in force at 1.5.2020, see [art. 1](#)

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## Service of notices

**41.**—(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 (7) to (9), by electronic transmission.

(2) Paragraph (1)(a) (service by post) does not apply in relation to the requirement to serve notice of the undertaker's intention to exercise the power under paragraph (5) of Article 20.

(3) 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.

(4) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>M3</sup> 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.

(5) 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.

(6) 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.

(7) 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.

(8) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (9).

(9) 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.

(10) This article does not exclude the employment of any method of service not expressly provided for by it.

**Commencement Information**

**I6** Art. 41 in force at 1.5.2020, see [art. 1](#)

**Marginal Citations**

**M3** 1978 c.30.

**Procedures in relation to certain approvals etc.**

**42.**—(1) Subject to paragraph (2), Schedule 12 (procedure in relation to certain approvals etc.) is to have effect in relation to all consents, agreements or approvals contemplated by any provisions of this Order.

(2) Schedule 12 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 10 (protective provisions) or any dispute under article 20(6) (protective work to buildings) to which the following paragraph applies.

(3) Subject to any other provision in this Order, any difference or dispute arising under any provision of Schedule 10 or article 20(6) 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.

**Commencement Information**

**I7** Art. 42 in force at 1.5.2020, see [art. 1](#)

**No double recovery**

**43.** Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

**Commencement Information**

**I8** Art. 43 in force at 1.5.2020, see [art. 1](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Riverside Energy Park Order 2020, PART 4.