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STATUTORY INSTRUMENTS

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**2024 No. 393**

The National Grid (Yorkshire Green Energy  
Enablement Project) Development Consent Order 2024

PART 6

MISCELLANEOUS AND GENERAL

**Application of landlord and tenant law**

**42.**—(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.

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

**43.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990<sup>(1)</sup> in relation to a nuisance falling within paragraphs (g) (noise emitted from premises so as to be prejudicial to health or a nuisance) and (ga) (noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order must be made, and no fine may be imposed, under section 82(2) (summary proceedings by persons aggrieved by statutory nuisances) of that Act if—

- (a) the defendant shows that the nuisance—

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(1) 1990 c. 43. There are amendments to this sub-section which are not relevant to this Order.

- (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), of the Control of Pollution Act 1974(2); or
  - (ii) 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 the controls and measures relating to noise as described in the code of construction practice or the construction management plans or in accordance with the noise levels set out in an environmental permit relating to the construction, maintenance or operation of the authorised development; or
  - (iii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
  - (iv) is a consequence of complying with a requirement of this Order 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) For the purposes of paragraph (1) above, compliance with the controls and measures relating to noise described in the code of construction practice and the noise and vibration management plan will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Where a relevant planning authority is acting in accordance with section 60(4) (control of noise on construction sites) and section 61(4) (prior consent for work on construction sites) of the Control of Pollution Act 1974 in relation to the construction of the authorised development then the local authority must also have regard to the controls and measures relating to noise referred to in the code of construction practice and the construction management plans.

(4) 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.

### **Maintenance of drainage works**

**44.**—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(3).

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(2) 1974 c. 40. Section 61 was amended by section 162(1) of, and paragraph 15(3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to section 61 but none are relevant to this Order.

(3) 1991 c. 59, definition substituted by Part V, section 100(2) of the Environment Act 1995 (c. 25).

## Traffic regulation

**45.**—(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 or for purposes ancillary to it prohibit vehicular access and prohibit waiting of vehicles in the manner specified in Part 1 of Schedule 14 (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.

(2) Without limiting the scope of the specific power 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, which consent must not be unreasonably withheld or delayed, 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, or for purposes ancillary to it, at any time prior to when the authorised development is first brought into operational use—

- (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 to do so 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 (power of local authorities to provide parking places) of the 1984 Act, and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 14 (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 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(4).
- (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.

(9) Any application for consent under paragraphs (1) and (2) must include a statement that the provisions of paragraph (8) apply to that application.

### **Felling or lopping of trees and removal of hedgerows**

**46.**—(1) The undertaker may fell, lop, prune, coppice, pollard, or reduce in height or width any tree, shrub, shrubbery, hedgerow, or important hedgerow under or within or overhanging or 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, shrub, shrubbery, hedgerow or important hedgerow—

- (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, constructing, maintaining, or operating the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause any unnecessary damage to any tree, shrub, shrubbery or hedgerow, or important hedgerow 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 (determination of questions of disputed compensation) 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 (exceptions) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012<sup>(5)</sup> and the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(5) The undertaker may not pursuant to paragraph (1) fell or lop a tree within or overhanging the extent of the public highway without the consent of the relevant highway authority.

(6) If the relevant highway authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5) the relevant highway authority is deemed to have granted consent.

(7) The power conferred by paragraph (1) removes any obligation upon the undertaker to secure any consent to remove—

- (a) the hedgerows listed in Schedule 17 (hedgerows which may be removed); or
- (b) subject to consultation with the relevant planning authority, any hedgerow within the Order limits that may be identified and that is not otherwise described in Schedule 17 (hedgerows which may be removed)

under the Hedgerows Regulations 1997<sup>(6)</sup>.

(8) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997.

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(5) [S.I. 2012/605](#).

(6) [S.I. 1997/1160](#).

(9) Any application for consent under paragraph (5) must include a statement that the provisions of paragraph (6) apply to that application.

### **Protection of interests**

47. Schedule 15 (protective provisions) has effect.

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

48.—(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, rights of way and public rights of navigation plan (Document 2.7.1 – 2.7.6);
- (b) the arboricultural impact assessment (Document 5.3.3I);
- (c) the book of reference (Document 4.3);
- (d) the environmental statement (Documents 5.1 to 5.4.18, 5.2.19 and 5.2.22);
- (e) the code of construction practice (Document 5.3.3B);
- (f) the archaeological written scheme of investigation (Document 5.3.3C);
- (g) the biodiversity mitigation strategy (Document 5.3.3D);
- (h) the construction traffic management plan (Document 5.3.3F);
- (i) the public rights of way management plan (Document 5.3.3G);
- (j) the noise and vibration management plan (Document 5.3.3H);
- (k) the outline landscape mitigation strategy (Figure 3.10 – 3.12, Document 5.4.3);
- (l) the outline soil management plan (Document 5.3.3E);
- (m) the design drawings (Document 2.15);
- (n) the land plan (Document 2.5.1–2.5.6);
- (o) the extinguishment of easements, servitudes and other private rights plan (Document 2.14);
- (p) the traffic regulation order plan (Document 2.12.1–2.12.6);
- (q) the works plan (Document 2.6.1–2.6.6);
- (r) the design approach to site specific infrastructure (Document 8.18);

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**

49.—(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 (references to service by post) of the Interpretation Act 1978(7) 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—

- (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.**

**50.**—(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 under Schedule 3 (requirements), and any document referred to in Schedule 3 (requirements).

(3) The procedure set out in paragraphs (3) to (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**

**51.**—(1) The local enactments specified in Part 1 of Schedule 16 (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.

### **Arbitration**

**52.** Subject to article 50 (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.

### **Temporary closure of, and works in, the river Ouse**

**53.**—(1) The undertaker may, subject to Part 3 of Schedule 15 (protective provisions), in connection with the construction and maintenance of the authorised development, temporarily interfere with the relevant part of the river for the purposes of the removal, installation and maintenance of the overhead electric lines comprised in Work No. 6 (XC and XCP overhead electric lines, and XC overhead electric line) of Schedule 1 (authorised development) and any associated development in connection with it.

(2) Without limitation on the powers conferred by paragraph (1) but subject to paragraphs (3) and (4) the undertaker may, in connection with the construction and maintenance of the authorised development 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) must be exercised in such a way which secures—

- (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) During the period of any closure referred to in paragraph (2) all rights of navigation and other rights relating to and any obligations of the Trust to manage the relevant part of the river so closed are to be suspended and unenforceable against the Trust.

(5) Any person who as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private rights of navigation 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.

(6) In this article, “the relevant part of the river” means so much of the River Ouse as is within the Order limits and the “Trust” means the Canal & River Trust.