
STATUTORY INSTRUMENTS

2016 No. 297

The Thorpe Marsh Gas Pipeline Order 2016

PART 3

Operations

Operation and use of the authorised development

4. The undertaker may at any time operate and use the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

Maintenance of authorised development

5.—(1) The undertaker may at any time maintain the authorised development within the Order limits, except to the extent that this Order or any agreement made under this Order provides otherwise.

(2) Paragraph (1) does not authorise diversion of the authorised development—

- (a) outside the limits of deviation;
- (b) which would result in the authorised development varying from the description in Schedule 1; or
- (c) not assessed in the environmental statement.

Limits of deviation

6. In carrying out or maintaining the authorised development the undertaker may—

- (a) deviate the pipeline works laterally from the lines or situations of the authorised development shown on the works plans within the extent of the limits of deviation shown on those plans;
- (b) with the exception of Works No. 83, 84, 122 and 123, deviate the pipeline works vertically upwards to a limit of not less than 1.2 metres below the surface of the ground (except where ground conditions make compliance with this upwards limit impracticable in which case the upwards limit is 0.7 metres below the surface of the ground);
- (c) with the exception of Work No. 57, deviate the pipeline works to any extent downwards as may be found to be necessary to a maximum depth of 20 metres below the surface of the ground;
- (d) deviate Works No. 5, 6 or 7 vertically only to the maximum extent assessed in the environmental statement.

Benefit of Order

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of this Order are to have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

8.—(1) Except where paragraph (4) applies, in which case no such consent is required, the undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1)(a) or (b), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) This paragraph applies to a transfer to National Grid Gas of any part of the benefit of provisions of this Order, and those obligations and liabilities, and any related statutory rights which relate to, or any which may be necessary or expedient for or ancillary to, the construction, operation, maintenance and diversion of Work No. 5 by National Grid Gas.

Application and modification of the 1997 Regulations

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

“; or

- (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

Defence to proceedings in respect of statutory nuisance

10.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁾ (summary proceedings by person aggrieved by statutory nuisance) 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 may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) 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
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include a 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), do not apply where the consent relates

(1) 1990 c.43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c.25).

(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.43).

to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Procedure in relation to certain approvals etc.

11.—(1) Where an application is made to 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 must, if given, be given in writing and must not be unreasonably withheld.

(2) In relation to all agreements or approvals granted, refused or withheld in relation to Requirements, the following provisions apply so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission as if the relevant Requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(3) For the purposes of paragraph (2) a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

(4) 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 6 of the Electricity Act 1989.

(5) Nothing in paragraph (2)(b) affects the application of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.