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STATUTORY INSTRUMENTS

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**2016 No. 297**

**The Thorpe Marsh Gas Pipeline Order 2016**

**PART 7**

Miscellaneous and general

**Application of landlord and tenant law**

**33.**—(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.

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

**34.** 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 operational land for the purposes of that Act).

**Guarantees in respect of payment of compensation**

**35.**—(1) The undertaker must not begin to exercise the powers of compulsory acquisition set out in articles 20 to 32 in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose which has been approved by the Secretary of State.

(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(3) The guarantee or alternative form of security must be in place for a maximum of 15 years from the date that the relevant power of this Order is exercised.

#### **No double recovery**

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

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

**37.**—(1) Save for any trees subject to tree preservation orders which are dealt with pursuant to article 38 (trees subject to tree preservation orders), the undertaker may fell, lop or prune any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub 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 from constituting a danger to persons constructing, maintaining, operating or using the authorised development.

(2) In carrying out any activity authorised by paragraph (1) or (4), 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, must be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development—

- (a) remove any hedgerows (other than important hedgerows) within the Order limits that may be required for the purposes of the carrying out of the authorised development; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 8 (removal of important hedgerows) and identified on the important hedgerows plan.

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

#### **Trees subject to tree preservation orders**

**38.**—(1) The undertaker may fell, lop or prune any tree within the Order limits subject to a tree preservation order which was made after 18th November 2014, or cut back its roots, if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with 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 loss or damage arising from such activity; and
- (b) the duty contained 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, must be determined under Part 1 of the 1961 Act.

## **Crown rights**

**39.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any lessee or licensee—

- (a) to enter upon, use and carry out the authorised development on or in any manner interfere with any land or rights of whatsoever description—
  - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that Government Department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

## **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—

- (a) the AGI plan;
- (b) the book of reference;
- (c) the Crown land plan;
- (d) the environmental statement;
- (e) the flood risk assessment addendum;
- (f) the historic environment plan;
- (g) the important hedgerows plan;
- (h) the land plans;
- (i) the nature conservation plan;
- (j) the outline construction environmental management plan;
- (k) the outline construction traffic management plan;
- (l) the outline public rights of way plan;
- (m) the pipe dump plan;
- (n) the public rights of way plan;
- (o) the runway plan; and
- (p) the works plan,

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.

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

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**Protection of interests**

41. Schedule 9 (protective provisions) has effect.

**Arbitration**

42. Any difference under any provision of this Order, unless otherwise provided for, is to 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.