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DRAFT STATUTORY INSTRUMENTS

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**2013 No. 0000**

**INFRASTRUCTURE PLANNING**

**TRANSPORT**

**The Highway and Railway (Nationally Significant Infrastructure Project) Order 2013**

*Made* - - - - - *2013*

*Coming into force in accordance with article 1*

The Secretary of State for Transport makes the following Order in exercise of the powers conferred by sections 14(3) and (4) and 232(3) of the Planning Act 2008(a).

A draft of this Order has been laid before Parliament and has been approved by a resolution of each House of Parliament in accordance with section 232(6) of that Act.

**Citation and commencement**

**1.**—(1) This Order may be cited as the Highway and Railway (Nationally Significant Infrastructure Project) Order 2013.

(2) This Order comes into force on the day after the day on which it is made.

**Interpretation**

**2.** In this Order “the Act” means the Planning Act 2008.

**Amendments to section 22 of the Planning Act 2008**

**3.** For section 22 of the Act (highways) substitute—

**“22 Highways**

(1) Highway-related development is within section 14(1)(h) only if the development is—

- (a) construction of a highway in a case within subsection (2),
- (b) alteration of a highway in a case within subsection (3), or
- (c) improvement of a highway in a case within subsection (5).

(2) Construction of a highway is within this subsection only if—

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(a) 2008 c. 29. There are amendments which are not relevant to this Order.

- (a) the highway will (when constructed) be wholly in England,
  - (b) the Secretary of State will be the highway authority for the highway, and
  - (c) the area of development is greater than the relevant limit set out in subsection (4).
- (3) Alteration of a highway is within this subsection only if—
- (a) the highway is wholly in England,
  - (b) the Secretary of State is the highway authority for the highway, and
  - (c) the area of development is greater than the relevant limit set out in subsection (4).
- (4) For the purposes of subsections (2)(c) and (3)(c) the relevant limit —
- (a) in relation to the construction or alteration of a motorway, is 15 hectares,
  - (b) in relation to the construction or alteration of a highway, other than a motorway, where the speed limit for any class of vehicle is expected to be 50 miles per hour or greater, is 12.5 hectares, and
  - (c) in relation to the construction or alteration of any other highway is 7.5 hectares.
- (5) Improvement of a highway is within this subsection only if—
- (a) the highway is wholly in England,
  - (b) the Secretary of State is the highway authority for the highway, and
  - (c) the improvement is likely to have a significant effect on the environment.
- (6) Highway-related development does not fall within section 14(1)(h) if—
- (a) an order mentioned in section 33(4) has been made in relation to the development before 1 March 2010,
  - (b) a further order is needed in relation to the development, and
  - (c) not more than 7 years have elapsed since the making of the earlier order.
- (7) Alteration of a highway is not within section 14(1)(h) if
- (a) planning permission has been granted for a development,
  - (b) the alteration is necessary as a result of the development, and
  - (c) the developer has asked for the alteration to be made to the highway.
- (8) Alteration of a highway is not within section 14(1)(h) if—
- (a) an order mentioned in section 33(4) has been made in relation to local highway works,
  - (b) the alteration is necessary as a result of the local highway works, and
  - (c) the local highway authority responsible for the local highway works has asked for the alteration to be made to the highway.
- (9) In this section—
- “area of development” —
- (a) in relation to construction of a highway, means the land on which the highway is to be constructed and any adjoining land expected to be used in connection with its construction;
  - (b) in relation to alteration of a highway, means the land on which the part of the highway to be altered is situated and any adjoining land expected to be used in connection with its alteration;
- “local highway authority” has the meaning given by section 329(1) of the Highways Act 1980(a);

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(a) 1980 c.66. There are amendments to section 329(1) which are not relevant to this Order. Section 16 is amended by the Planning Act 2008, Schedule 2, paragraphs 21 and 24.

“local highway works” means works carried out by or on behalf of a local highway authority in relation to a highway for which it is the highway authority (and the local highway authority is referred to in this section as “responsible” for those works);

“motorway” means a highway which is a special road in accordance with section 16 of the Highways Act 1980.”.

#### **Amendments to section 25 of the Planning Act 2008**

4.—(1) Section 25 of the Act (railways) is amended as follows.

(2) In subsection (1) after paragraph (b) (but before the “and”) insert—

“(ba) the railway will (when constructed) include a stretch of track that—

- (i) is a continuous length of more than 2 kilometres, and
- (ii) is not on land that was operational land of a railway undertaker immediately before the construction work began or is on land that was acquired at an earlier date for the purpose of constructing the railway.”.

(3) In subsection (2) after paragraph (b) (but before the “and”) insert—

“(ba) the alteration of the railway will include laying a stretch of track that—

- (i) is a continuous length of more than 2 kilometres, and
- (ii) is not on land that was operational land of a railway undertaker immediately before the alteration work began or is on land that was acquired at an earlier date for the purpose of the alteration,”.

(4) After subsection (2) insert—

“(2A) Construction or alteration of a railway is not within section 14(1)(k) to the extent that it takes place on the operational land of a railway undertaker unless that land was acquired for the purpose of the construction or alteration.”

(5) In subsection (7) at the appropriate places insert—

““operational land” has the same meaning as in the TCPA 1990(a);”;

““railway undertaker” has the same meaning as in Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995(b);”.

(6) In subsection (8), for “The reference in subsection (7)” substitute “In the definition of “permitted development” in subsection (7), the reference”.

#### **Transitional and Savings**

5.—(1) Where an application has been made, before the day on which this Order comes into force for an order granting development consent for a highway-related development or the construction or alteration of a railway, but such application has not been decided before that day—

- (a) the application must continue to be considered and such an order must be made or development consent refused in accordance with the provisions of the Act;
- (b) the provisions of the Act are to continue to apply to any such order that is made or to any refusal of development consent; and

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(a) Section 234 of the Act defines “TCPA 1990” as meaning the Town and Country Planning Act 1990 c. 8. Section 263 read with section 264 of the TCPA 1990 defines “operational land”. Section 263 has been amended but the amendments are not relevant to this Order. Section 264(4A) and (4B) were inserted by the Transport for London (Consequential Provisions) Order 2003 (2003/1615), Schedule 1, Part 1, paragraph 14; subsection 5(b) was amended by the Planning and Compulsory Purchase Act 2004 (2004 c. 5), section 40(2)(k) and further amended by the Localism Act 2011 (2011 c. 20), Schedule 12, paragraph 20(a) and by Schedule 25, Part 18; subsection 5(ca) was inserted by the Localism Act 2011, Schedule 12, paragraph 20(b). There are other amendments but they are not relevant to this Order.

(b) S.I. 1995/418 to which there are amendments not relevant to this Order.

- (c) any such order is to have effect and the provisions of the Act are to apply in relation to the highway-related development or the construction or alteration of a railway in respect of which the order is made,

as if, in each case, the amendments made by this Order had not been made.

(2) Where, before the coming into force of this Order, an order has been made to grant development consent for a highway-related development or the construction or alteration of a railway or an application for an order has been refused—

- (a) the provisions of the Act are to continue to apply to any such order or to any refusal of development consent; and
- (b) any such order is to have effect and the provisions of the Act are to apply in relation to the highway-relevant development or the construction or alteration of a railway in respect of which the order has been made,

as if, in each case, the amendments made by this Order had not been made.

Signed by authority of the Secretary of State for Transport

Date

*Name*  
Minister of State  
Department for Transport

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Planning Act 2008 (c.29) (“the Act”). It substitutes a new section for section 22 (Highways), and amends section 25 (Railways). Sections 22 and 25 of the Act set out where highway-related development and where the construction or alteration of a railway fall within the respective scope of section 14(1)(h) and (k) of the Act so as to represent “nationally significant infrastructure projects” for the purposes of the Act. Nationally significant infrastructure projects require development consent under the Act before they can proceed.

*Article 3* substitutes a new section 22 into the Act.

Subsection (1) of the substituted section 22 provides that highway-related development only falls within the scope of section 14(1)(h) of the Act (so as to represent “nationally significant infrastructure”) where the development is construction, alteration or improvement of a highway falling within the cases set out in subsections (2), (3) and (5) of the substituted section 22.

Subsection (2) and (3) of the substituted section 22 provide that the construction or alteration of a highway will only fall within section 14(1)(h) of the Act where the highway will be, or is, in England, the Secretary of State will be, or is, the highway authority and the area of development exceeds the limit values in subsection (4) of the substituted section 22. The limit values in subsection (4) are set for motorways, highways with a speed limit greater than 50 miles per hour and for all other highways.

Subsection (5) of the substituted section 22 replicates without change subsection (3) of the previous section 22, and contains provisions relating to improvement of a highway. Improvements to a highway will only fall within the scope of section 14(1)(h) of the Act where the highway is wholly in England, the Secretary of State is the highway authority and the improvement is likely to have a significant environmental effect.

Subsection (6) of the substituted section 22 exempts highway-related development from being a nationally significant infrastructure project where any order listed in section 33(4) of the Planning Act has been made before 1<sup>st</sup> March 2010 and where a further order is needed. Subsections 22(7) and (8) of the substituted section 22 provide for two new exemptions from the alteration limb of the definition of highway-related development falling within the nationally significant infrastructure category. Subsection (7) exempts highway-related development consisting of an alteration to the highway where planning permission has already been granted for a development, the alteration is required as a result of that development and the developer has asked the Secretary of State to make the alteration. Subsection (8) exempts highway-related development consisting of an alteration to a highway which is necessary as a result of local highway works (for which an order mentioned in section 33(4) of the Act has been made in relation to those works) and the local highway authority has asked the Secretary of State to carry out those works. Local highway works are defined in subsection (9) of the substituted section 22 as being works carried out by or on behalf of a local highway authority to a highway for which it (rather than the Secretary of State) is the highway authority. Subsection (9) also sets out certain other new definitions for the purposes of the substituted section 22.

*Article 4(2)* amends section 25(1) of the Act so that, in addition to having to meet the existing criteria set out in that subsection, the construction of a railway will only fall within section 14(1)(k) of the Act if the railway, when constructed, will include a continuous stretch of track of more than 2 kilometres in length on land that either was not railway operational land immediately before the construction work began or else was acquired for the purpose of constructing the railway.

*Article 4(3)* amends section 25(2) of the Act so that, in addition to having to meet the existing criteria set out in that subsection, the alteration of a railway will only fall within section 14(1)(k) of the Act if the alteration includes the laying of a continuous stretch of track of more than 2

kilometres in length on land that either was not railway operational land immediately before the alteration work began or else was acquired for the purpose of the alteration.

*Article 4(4)* inserts a new subsection (2A) in section 25 of the Act which provides that the construction or alteration of a railway is not within section 14(1)(k) of the Act to the extent that the construction or alteration of the railway is on the operational land of a railway undertaker (unless that operational land was acquired for the purpose of the construction or alteration of the railway).

*Article 4(5)* amends section 25(7) of the Act to include definitions for ‘operational land’ and ‘railway undertaker’.

*Article 4(6)* makes a minor consequential amendment to section 25(8) of the Act.

*Article 5* makes transitional and savings provisions. *Article 5(1)* makes provision for circumstances where an application (whether for a rail or highways-related development) has been submitted prior to the coming into force of this Order. The application process continues to go forward under the Act as it would have done if the Order had not been made and where an order for development consent is made or development consent refused, then the options for challenge are as provided for in the Act. Finally, any provisions in an order for development consent that is made following the conclusion of the process under the Act will continue to have effect and any provisions of the Act that would have applied if this Order had not been made continue to apply.

*Article 5(2)* makes provision for where an order for development consent has already been made or development consent has been refused prior to the coming into force of this Order. The options for challenge as provided for in the Act will apply to any such order or refusal. Also any provisions of an order for development consent made prior to the coming into force of this Order continue to have effect and that the provisions of the Act continue to apply to the order for development consent that has been made.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is annexed to the Explanatory Memorandum for this Order on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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*Draft Order laid before Parliament under section 232(6) of the Planning Act 2008, for approval by resolution of each House of Parliament.*

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