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STATUTORY INSTRUMENTS

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**2020 No. 419**

**The Riverside Energy Park Order 2020**

**PART 1**

PRELIMINARY

**Citation and commencement**

1. This Order may be cited as the Riverside Energy Park Order 2020 and comes into force on 1st May 2020.

**Commencement Information**

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

**Interpretation**

2.—(1) In this Order, unless otherwise stated—

“the 1961 Act” means the Land Compensation Act 1961 <sup>M1</sup>;

“the 1965 Act” means the Compulsory Purchase Act 1965 <sup>M2</sup>;

“the 1980 Act” means the Highways Act 1980 <sup>M3</sup>;

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981 <sup>M4</sup>;

“the 1984 Act” means the Road Traffic Regulation Act 1984 <sup>M5</sup>;

“the 1990 Act” means the Town and Country Planning Act 1990 <sup>M6</sup>;

“the 1991 Act” means the New Roads and Street Works Act 1991 <sup>M7</sup>;

“the 2008 Act” means the Planning Act 2008 <sup>M8</sup>;

“access and public rights of way plans” means the plans of that description referred to in Schedule 11 (documents and plans to be certified) certified by the Secretary of State as the access and public rights of way plans for the purposes of this Order under article 40 (certification of plans etc.);

“address” includes any number or address used for the purposes of electronic transmission;

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks; electricity cables; telecommunications equipment and electricity cabinets;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“book of reference” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the book of reference for the purposes of this Order under article 40 (certification of plans etc.);

“biodiversity units” means the product of the size of an area, and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value (as assessed using the Defra biodiversity off-setting metric);

“biodiversity off-setting scheme” means a scheme which will deliver biodiversity enhancements which must not be less than the off-setting value;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“CHP statement” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the CHP statement for the purposes of this Order under article 40 (certification of plans etc.);

“commence” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than the pre-commencement works and the words “commencement” and “commenced” and other cognate expressions are to be construed accordingly;

“commissioning” means the process of assuring that all systems and components of the authorised development or part of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions are to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 (notice of authorisation of compulsory acquisition) of the 2008 Act;

[<sup>F1</sup>“Cory group company” means any company that is a direct or indirect subsidiary of Cory Topco Limited (company number 11385842) including a direct or indirect subsidiary of Cory Environmental Holdings Limited;]

“date of final commissioning” means the date on which the commissioning of the authorised development (or any part of the authorised development as the context requires) is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 23 of Schedule 2 (requirements);

“Defra biodiversity off-setting metric” means the mechanism published by the Department for Environment, Food and Rural Affairs in 2012 to quantify impacts on biodiversity, which allows biodiversity losses and gains affecting different habitats to be compared and ensures offsets are sufficient to compensate for residual losses of biodiversity;

“design principles” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the design principles for the purposes of this Order under article 40 (certification of plans etc.);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means provided it is in an electronic form;

“Environment Bank” means the Environment Bank Limited (company number 05944540) whose registered office is at Low Bramley Grange Farm, Bramley Grange Grewelthorpe, Ripon, North Yorkshire, HG4 3DN together with its successors;

“environmental statement” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the environmental statement for the purposes of this Order under article 40 (certification of plans etc.);

“flood risk activity” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016 <sup>M9</sup>;

“flood risk assessment” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“FRAPA drawings” means the drawings of that description referred to in Schedule 11 certified by the Secretary of State as the FRAPA drawings for the purposes of this Order;

“Greater London Authority” means the Greater London Authority, City Hall, The Queen's Walk, More London, London, SE1 2AA;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“land plans” means the plans of that description referred to in Schedule 11 certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation shown for each numbered work on the works plans;

“London Power Networks” means London Power Networks PLC (company number 03929195) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP or a subsidiary of London Power Networks PLC;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not replace the whole of the authorised development, but only insofar as such activities do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“MOL plan” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the MOL plan for the purposes of this Order;

“off-setting value” means the net biodiversity impact of the authorised development, calculated using the Defra biodiversity off-setting metric, measured in biodiversity units;

“operational period” means the period from the date of final commissioning to the permanent cessation of the operation of Work No. 1;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development as shown on the land plans;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“outline biodiversity and landscape mitigation strategy” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline biodiversity and landscape strategy for the purposes of this Order;

“outline code of construction practice” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline code of construction practice for the purposes of this Order;

“outline construction traffic management plan” means Appendix L of the transport assessment;

“outline drainage design strategy” means Appendix G of the flood risk assessment;

“outline lighting strategy” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the outline lighting strategy for the purposes of this Order;

“outline operational worker travel plan” means Appendix M of the transport assessment;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981 <sup>M10</sup>;

“pre-commencement land” means the land shown on the pre-commencement plan;

“pre-commencement plan” means the plan of that description referred to in Schedule 11 certified by the Secretary of State as the pre-commencement plan for the purposes of this Order;

“pre-commencement works” means operations on the pre-commencement land only consisting of land preparation, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), receipt and erection of construction plant and equipment, erection of construction welfare facilities, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and any other works that do not give rise to any likely significant adverse environmental effects as assessed in the environmental statement;

“relevant planning authority” means the London Borough of Bexley and any successor to its functions in relation to land in its area, and Dartford Borough Council and any successor to its functions in relation to land in its area;

“REP and RRRF Application Boundaries Plan” means the plan of that description referred to in Schedule 11 certified by the Secretary of State as the REP and RRRF Application Boundaries Plan for the purposes of this Order;

“requirements” means those matters set out in Schedule 2 to this Order;

“Riverside Energy Park Limited” means the company of that name (company number 11536739) whose registered address is Level 5, 10 Dominion Street, London, England, EC2M 2EF;

“RRRF” means the Riverside Energy from Waste Facility known as Riverside Resource Recovery Facility located at Norman Road, Belvedere, Kent;

[<sup>F2</sup>“RRRF 2021 condition” means a condition to the RRRF 2021 planning permission and where a condition is referred to by a number, that reference is to the corresponding numbered condition on the RRRF 2021 planning permission;]

[<sup>F2</sup>“RRRF 2021 planning permission” means the planning permission deemed to be granted under the 1990 Act by the Secretary of State for the RRRF and dated 17th December 2021;]

“RRRF condition” means a condition to the RRRF planning permission and where a condition is referred to by a number, that reference is to the corresponding numbered condition on the RRRF planning permission;

“RRRF planning permission” means the planning permission granted under the 1990 Act by the relevant planning authority for the RRRF and given reference number 16/02167/FUL;

“RRRL” means Riverside Resource Recovery Limited (company number 03723386) whose registered office is at 2 Coldbath Square, London, EC1R 5HL together with its successors in title of that part of the Order land identified in the book of reference;

“section 36 consent” means the consent granted by the Secretary of State pursuant to section 36 (consent required for construction of etc. generating stations) of the Electricity Act 1989 <sup>M11</sup> in respect of the RRRF as varied by the Secretary of State on 13 March 2015 under Section 36C (variation of consents under section 36) of that Act and given reference number GDBC/003/00001C-06;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers' land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of Chapter I) of the Communications Act 2003 <sup>M12</sup>;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the same meaning as in section 121A of the Road Traffic Regulation Act 1984;

“transport assessment” means the document of that description referred to in Schedule 11 certified by the Secretary of State as the transport assessment for the purposes of this Order;

“Transport for London” means the body corporate established under section 154 (establishment) of the Greater London Authority Act 1999 of 55 Broadway, London, SW1H 0BL and any successor to its functions in relation to streets within the London Borough of Bexley;

“undertaker” means Cory Environmental Holdings Limited (company number 05360864, whose registered office is at Level 5, 10 Dominion Street, London, England, EC2M 2EF) or any other person who for the time being has the benefit of this Order in accordance with articles 8 and 9 of this Order;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“works plans” means the plans of that description referred to in Schedule 11 certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works numbered in Schedule 1.

(6) References to “Schedule” are, unless otherwise stated, references to Schedules to this Order.

(7) The expression “includes” is to be construed without limitation.

(8) References to any statutory body include any body's successor in respect of functions which are relevant to this Order.

(9) References in this Order to “part of the authorised development” means all or part of any numbered work.

#### **Textual Amendments**

- F1** Words in [art. 2\(1\)](#) inserted (10.3.2021) by [The Riverside Energy Park \(Correction\) Order 2021 \(S.I. 2021/273\)](#), [art. 1\(2\)](#), [Sch.](#)

*Changes to legislation:* There are currently no known outstanding effects for the The Riverside Energy Park Order 2020. (See end of Document for details)

**F2** Words in art. 2(1) inserted (17.2.2023) by [The Riverside Energy Park \(Amendment\) Order 2023 \(S.I. 2023/165\)](#), arts. 1, 3

#### Commencement Information

**I2** Art. 2 in force at 1.5.2020, see [art. 1](#)

#### Marginal Citations

**M1** 1961 c.33.

**M2** 1965 c.56.

**M3** 1980 c.66.

**M4** 1981 c.66.

**M5** 1984 c.27.

**M6** 1990 c.8.

**M7** 1991 c.22.

**M8** 2008 c.29.

**M9** [S.I. 2016/1154](#).

**M10** 1981. c.67. Section 7 was amended by paragraph 9 of Schedule 15 to the [Planning and Compensation Act 1991 \(c.34\)](#). There are other amendments to this section which are not relevant to this Order.

**M11** 1989 c.29

**M12** 2003 c.21

## PART 2

### WORK PROVISIONS

#### *Principal powers*

#### Development consent granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be constructed, operated and maintained within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

(3) In constructing and maintaining the authorised development the undertaker may deviate vertically from the levels of the authorised development to any extent downwards not exceeding two metres.

#### Commencement Information

**I3** Art. 3 in force at 1.5.2020, see [art. 1](#)

#### Maintenance of authorised development

4.—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order and the requirements or an agreement made under this Order provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

**Commencement Information**

**I4** Art. 4 in force at 1.5.2020, see [art. 1](#)

**Operation of the authorised development**

**5.**—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(2) Other than as set out in this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of an electricity generating station.

**Commencement Information**

**I5** Art. 5 in force at 1.5.2020, see [art. 1](#)

**Disapplication of legislative provisions and modifications to section 36 consent and RRRF planning permission**

**6.**—(1) The provisions of any bylaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (bylaw – making powers of the authority) to the Water Resources Act 1991<sup>M13</sup> do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

(2) Regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 does not apply in respect of any flood risk activity carried out under the powers conferred by this Order.

(3) The section 36 consent and the RRRF planning permission are to be amended for the purposes of this Order only as set out in Schedule 13 (modifications to the section 36 consent and RRRF planning permission).

[<sup>F3</sup>(4) To the extent that there is an inconsistency on the land coloured brown identified on the REP and RRRF Applications Boundaries Plan between any provision of this Order and all or any of RRRF condition 1, RRRF condition 22, RRRF condition 32, RRRF 2021 condition 1, RRRF 2021 condition 22 or RRRF 2021 condition 32 then, in respect of such inconsistency only, there is deemed to be no breach of all or any of RRRF condition 1, RRRF condition 22, RRRF condition 32, RRRF 2021 condition 1, RRRF 2021 condition 22 or RRRF 2021 condition 32 (as applicable) and no enforcement action can be taken following the carrying out of the pre-commencement works, commencement or operation of the authorised development.]

(5) In the event that planning permission 15/02926/OUTM is implemented and the land which is the subject of that planning permission is subsequently used for the temporary uses as authorised under this Order, a new planning permission is not required for the resumption of the land's development and use for which planning permission 15/02926/OUTM grants consent following the end of the temporary uses authorised under this Order.

(6) The provisions of the Neighbourhood Planning Act 2017<sup>M14</sup> in so far as they relate to temporary possession of land under articles 31 (temporary use of land for carrying out the authorised development) and 32 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

*Changes to legislation: There are currently no known outstanding effects for the The Riverside Energy Park Order 2020. (See end of Document for details)*

#### Textual Amendments

**F3** Art. 6(4) substituted (17.2.2023) by [The Riverside Energy Park \(Amendment\) Order 2023 \(S.I. 2023/165\)](#), arts. 1, 4

#### Commencement Information

**I6** Art. 6 in force at 1.5.2020, see [art. 1](#)

#### Marginal Citations

**M13** 1991 c. 57

**M14** 2017 c. 20

### Port of London Act 1968

7.—(1) Nothing in this Order relieves the undertaker of any obligation to obtain any permit or licence under the Port of London Act 1968<sup>M15</sup> in respect of works or operations carried out within the Thames under the powers of this Order.

(2) In this article “the Thames” means that part of the river Thames within the Order limits and within the limits of the Port of London Authority, as described in Schedule 1 (description of port limits) to the Port of London Act 1968.

#### Commencement Information

**I7** Art. 7 in force at 1.5.2020, see [art. 1](#)

#### Marginal Citations

**M15** 1968 (c.xxxii).

### Benefit of this Order

8.—(1) Subject to paragraph (2) and article 9 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to works falling within the description of paragraph (a) of Work No. 6 (but only in so far as such works relate to Work No. 9) and Work Nos. 9 and 10 for which consent is granted by this Order for the benefit of the undertaker and London Power Networks.

#### Commencement Information

**I8** Art. 8 in force at 1.5.2020, see [art. 1](#)

### Consent to transfer benefit of the Order

9.—(1) Subject to paragraph (4) the undertaker may, with the consent of the Secretary of State—

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



the authorised development) and such related statutory rights as may be agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1)(a) or (1)(b) references in this Order to the undertaker, except 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) 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) The consent of the Secretary of State is required for the exercise of the powers under paragraph (1) except where—

- (a) the transfer or grant is made to Riverside Energy Park Limited [<sup>F4</sup>(and in circumstances where Riverside Energy Park Limited is a Cory group company)]; or
- (b) the transferee or lessee holds a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989; or
- (c) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of any claims made;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(8) The notice given under paragraph (5) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

#### **Textual Amendments**

**F4** Words in art. 9(4)(a) substituted (10.3.2021) by [The Riverside Energy Park \(Correction\) Order 2021 \(S.I. 2021/273\)](#), art. 1(2), [Sch.](#)

#### **Commencement Information**

**I9** Art. 9 in force at 1.5.2020, see [art. 1](#)

### Guarantees in respect of payment of compensation

**10.**—(1) The undertaker must not begin to exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security and the amount of that security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 22 (compulsory acquisition of land);
- (b) article 24 (compulsory acquisition of rights);
- (c) article 26 (private rights);
- (d) article 31 (temporary use of land for carrying out the authorised development);
- (e) article 32 (temporary use of land for maintaining the authorised development); and
- (f) article 33 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security 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.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

#### Commencement Information

**I10** Art. 10 in force at 1.5.2020, see [art. 1](#)

### Streets

#### Street works

**11.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraph (a), (b), (c) or (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

**Commencement Information**

**I11** Art. 11 in force at 1.5.2020, see [art. 1](#)

**Power to alter layout, etc., of streets**

**12.**—(1) The undertaker may for the purposes of the authorised development alter the layout of or construct any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3) of that Part of that Schedule and in the case of temporary works as specified in column (2) of Part 2 of Schedule 4 in the manner specified in relation to that street in column (3) of that Part of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development alter the layout of any street within the order limits and, without limiting the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

**Commencement Information**

**I12** Art. 12 in force at 1.5.2020, see [art. 1](#)

**Temporary prohibition or restriction of use of streets and public rights of way**

**13.**—(1) The undertaker may, during and for the purposes of constructing the authorised development, temporarily alter, divert, prohibit the use of or restrict the use of any street or public right of way<sup>F5</sup>... and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) and vehicles going to or from premises abutting a street or public right of way affected by the temporary alteration, diversion, prohibition or restriction of a street or public right of way under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets or public rights of way specified in columns

(1) and (2) of Schedule 5 (temporary prohibition or restriction of the use of streets or public rights of way) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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**Textual Amendments**

**F5** Words in [art. 13\(1\)](#) omitted (10.3.2021) by virtue of [The Riverside Energy Park \(Correction\) Order 2021 \(S.I. 2021/273\)](#), [art. 1\(2\)](#), [Sch.](#)

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**Commencement Information**

**I13** Art. 13 in force at 1.5.2020, see [art. 1](#)

**Permanent stopping up of streets**

**14.—**(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up the street specified in columns (1) and (2) of Schedule 6 (permanent stopping up of streets) to the extent specified and as described in column (3) of that Schedule.

(2) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(3) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).

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**Commencement Information**

**I14** Art. 14 in force at 1.5.2020, see [art. 1](#)

**Access to works**

**15.** The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access in the location specified in Part 1 of Schedule 4;
- (b) form and layout the temporary means of access in the locations specified in Part 2 of Schedule 4; and
- (c) with the approval of the relevant planning authorities after consultation with the highway authority, form and lay out such other means of access or improve the existing means of

access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

**Commencement Information**

**I15** Art. 15 in force at 1.5.2020, see [art. 1](#)

**Agreements with street authorities**

- 16.**—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) the maintenance of any street or the structure of any bridge or tunnel carrying a street over or under the authorised development;
  - (d) any alteration diversion, prohibition or restriction in the use of a street authorised by this Order;
  - (e) the construction in the street of any of the authorised development; or
  - (f) any such works as the parties may agree.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

**Commencement Information**

**I16** Art. 16 in force at 1.5.2020, see [art. 1](#)

**Traffic regulation measures**

- 17.**—(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, in so far as may be expedient or necessary for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—
- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
  - (b) make provision as to the direction or priority of vehicular traffic on any road,
- either at all times or at times, on days or during such periods as may be specified by the undertaker.
- (2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—
- (a) given not less than 4 weeks' notice in writing of its intention so to do 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 in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary prohibition or restriction of use of streets and public rights of way) or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) 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 is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act (road traffic contraventions subject to civil enforcement) 2004 <sup>M16</sup>.

(4) In this article—

- (a) subject to sub-paragraph (b), expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

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**Commencement Information**

**I17** Art. 17 in force at 1.5.2020, see [art. 1](#)

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**Marginal Citations**

**M16** [2004 c.18](#). There are amendments to this Act not relevant to this Order.

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*Supplementary powers*

**Discharge of water**

**18.**—(1) Subject to sub-paragraphs (3) and (4), the undertaker may use any watercourse, public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991 <sup>M17</sup>.

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs, whose consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

- (4) The undertaker must not make any opening into any public sewer or drain except—
  - (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld or delayed; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964 <sup>M18</sup>, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 <sup>M19</sup> have the same meaning as in that Act.

#### Commencement Information

**I18** Art. 18 in force at 1.5.2020, see [art. 1](#)

#### Marginal Citations

**M17** 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the [Competition and Service \(Utilities\) Act 1992 \(c.43\)](#) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the [Water Act 2003 \(c.37\)](#) and section 32, Schedule 3, paragraph 16(1) of the Flood and Water Management Act 2010 c.29.

**M18** 1964 c.40.

**M19** 1991 c.57.

#### Authority to survey and investigate the land

**19.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or enter on any land which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required before entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land once it has ceased to use the land for the purposes authorised by this article.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act <sup>M20</sup>.

#### Commencement Information

**I19** Art. 19 in force at 1.5.2020, see [art. 1](#)

#### Marginal Citations

**M20** The functions of the Lands Tribunal under the 1961 Act are transferred to the Upper Tribunal under the [Tribunals, Courts and Enforcement Act 2007 \(c.15\)](#).

### Protective work to buildings

**20.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building or structure lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building or structure; or
- (b) after the completion of that part of the authorised development in the vicinity of the building or structure at any time up to the end of the period of 5 years beginning with the date of final commissioning.

(3) For the purpose of determining how the powers under this article are to be exercised the undertaker may enter and survey any building or structure falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building or structure the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building or structure and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order limits.

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works under this article to a building or structure;
- (b) a power under paragraph (3) to enter a building or structure and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building or structure and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter and take possession of land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building, structure or land not less than 14 days' notice of its intention to exercise that power and, in a case falling within sub-paragraph (a), (c) or (d) specifying the protective works proposed to be carried out.



(6) Where a notice is served under paragraph (5)(a), <sup>F6</sup>... (5)(c) or (5)(d), the owner or occupier of the building, structure or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building, structure or land to be referred to arbitration under article 42(3) (procedures in relation to certain approvals etc.).

(7) The undertaker must compensate the owners and occupiers of any building, structure or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out to a building or structure under this article; and
- (b) within 5 years beginning with the date of final commissioning for that part of the authorised development in the vicinity of the building or structure it appears that the protective works are inadequate to protect the building or structure against damage caused by the construction, on operation or maintenance of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building or structure for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building or structure by the construction, operation or maintenance of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation or maintenance of the authorised development.

#### Textual Amendments

**F6** Word in [art. 20\(6\)](#) omitted (10.3.2021) by virtue of [The Riverside Energy Park \(Correction\) Order 2021 \(S.I. 2021/273\)](#), [art. 1\(2\)](#), [Sch.](#)

#### Commencement Information

**I20** Art. 20 in force at 1.5.2020, see [art. 1](#)

### Felling or lopping of trees

**21.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging land 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—

- (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 the authorised development; or
- (c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) 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, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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**Commencement Information**

**I21** Art. 21 in force at 1.5.2020, see [art. 1](#)

## PART 3

### POWERS OF ACQUISITION AND POSSESSION OF LAND

#### *Powers of acquisition*

#### **Compulsory acquisition of land**

**22.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) This article is subject to article 24, article 25 (acquisition of subsoil only) and [<sup>F7</sup>article 31].

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**Textual Amendments**

**F7** Words in [art. 22\(2\)](#) substituted (10.3.2021) by [The Riverside Energy Park \(Correction\) Order 2021 \(S.I. 2021/273\)](#), [art. 1\(2\)](#), [Sch.](#)

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**Commencement Information**

**I22** Art. 22 in force at 1.5.2020, see [art. 1](#)

#### **Time limit for exercise of authority to acquire land compulsorily**

**23.**—(1) After the end of the period of five years beginning on the day on which this Order comes into force—

- (a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 28 (application of the 1981 Act).

(2) The authority conferred by article 31 [<sup>F8</sup>(temporary use of land for carrying out the authorised development)] must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

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**Textual Amendments**

**F8** Words in [art. 23\(2\)](#) substituted (10.3.2021) by [The Riverside Energy Park \(Correction\) Order 2021 \(S.I. 2021/273\)](#), [art. 1\(2\)](#), [Sch.](#)

**Commencement Information**

**I23** Art. 23 in force at 1.5.2020, see [art. 1](#)

**Compulsory acquisition of rights**

**24.**—(1) Subject to paragraph (2) the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 7 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and the benefit of restrictive covenants over land and the creation and acquisition of such new rights and the imposition of such new restrictive covenants as are specified in column (2) of the table in that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants)) and section 12 (divided land) of the 1981 Act, where the undertaker creates or acquires a right over land or the benefit of a restrictive covenant, under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictive covenants to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Subject to the modifications set out in Schedule 8 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restrictive covenant as they apply to the compulsory purchase of land and interests in land.

**Commencement Information**

**I24** Art. 24 in force at 1.5.2020, see [art. 1](#)

**Acquisition of subsoil only**

**25.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 22 (compulsory acquisition of land) and paragraphs (1) and (2) of article 24 (compulsory acquisition of rights) as may be required for any purpose for which

that land or rights over land may be created or acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

#### Commencement Information

**I25** Art. 25 in force at 1.5.2020, see [art. 1](#)

#### Private rights

**26.**—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker whether compulsorily or by agreement;
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act; or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are suspended and unenforceable or, where the owner of such rights or the person have the benefit of such restrictive covenants is notified by the undertaker, extinguished, in so far as the continuance of the right or the burden of the restrictive covenant would be inconsistent with the exercise of the right or burden of the restrictive covenant by the undertaker—

- (a) as from the date of acquisition of the right or imposition of the restriction by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article and without limiting paragraph (1), all private rights and restrictive covenants over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable

for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or the imposition of a restrictive covenant under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 33 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition or creation of rights over land or the imposition of restrictive covenants over or affecting the land;
- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

stating that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the use of land arising by virtue of a contract, agreement or undertaking having that effect.

#### **Commencement Information**

**I26** Art. 26 in force at 1.5.2020, see [art. 1](#)

#### **Power to override easements and other rights**

**27.**—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land within the Order limits (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

(a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

(i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

#### Commencement Information

**I27** Art. 27 in force at 1.5.2020, see [art. 1](#)

#### Application of the 1981 Act

**28.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2) substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

(5) Omit section 5A <sup>M21</sup> (time limit for general vesting declaration).

(6) In section 5B <sup>M22</sup> (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “ section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 2020 ”.

(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “ section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008 ”.

(8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 <sup>M23</sup> (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 25 (acquisition of subsoil only) of the Riverside Energy Park Order 2020, which excludes the acquisition of subsoil only from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 29 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

#### Commencement Information

**I28** Art. 28 in force at 1.5.2020, see [art. 1](#)

#### Marginal Citations

**M21** Inserted by section 182(2) of [The Housing and Planning Act 2016 \(c.22\)](#).

**M22** Inserted by section 202(2) of [The Housing and Planning Act 2016 \(c.22\)](#).

**M23** Inserted by paragraph 6 of Schedule 18 to [The Housing and Planning Act 2016 \(c.22\)](#).

### Modification of Part 1 of the 1965 Act

**29.**—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) <sup>M24</sup> (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “ section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 2020 ”.

(3) In section 11A <sup>M25</sup> (powers of entry: further notices of entry)—

- (a) in subsection (1)(a) after “land” insert “ under that provision ”; and
- (b) in subsection (2) after “land” insert “ under that provision ”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “ article 23 (time limit for exercise of authority to acquire land compulsorily) of the Riverside Energy Park Order 2020 ”.

(5) In Schedule 2A <sup>M26</sup> (counter-notice requiring purchase of land not in notice to treat)—

- (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 25(3) (acquisition of subsoil only) of the Riverside Energy Park Order 2020, which excludes the acquisition of subsoil only from this Schedule.”; and

- (b) after paragraph 29 insert—

## “PART 4 INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 20 (protective work to buildings) or article 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the Riverside Energy Park Order 2020.”.

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### Commencement Information

**I29** Art. 29 in force at 1.5.2020, see [art. 1](#)

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### Marginal Citations

**M24** Inserted by section 202(1) of the [Housing and Planning Act 2016 \(c.22\)](#).

**M25** Inserted by section 186(3) of the [Housing and Planning Act 2016 \(c.22\)](#).

**M26** Inserted by schedule 17(1) paragraph 3 to the [Housing and Planning Act 2016 \(c.22\)](#).

### Rights under or over streets

**30.—(1)** The undertaker may enter upon, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) is not to apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is to be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

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### Commencement Information

**I30** Art. 30 in force at 1.5.2020, see [art. 1](#)



### *Temporary possession of land*

#### **Temporary use of land for carrying out the authorised development**

**31.—(1)** The undertaker may, in connection with the construction of the authorised development—

- (a) enter on and take temporary possession of—
  - (i) so much of the land specified in columns (1) and (2) of the table in Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of the table in that Schedule;
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works (including mitigation works) specified in Schedule 9 in relation to that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or any debris removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(9) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights over any part of the Order land identified in Schedule 7 under article 24 (compulsory acquisition of rights); or
- (b) acquiring any right in the subsoil of any part of the Order land under article 25 (acquisition of subsoil only) or article 30 (rights under or over streets).

(10) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 9.

#### Commencement Information

**I31** Art. 31 in force at 1.5.2020, see [art. 1](#)

### Temporary use of land for maintaining the authorised development

**32.**—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (11)) relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning.

**Commencement Information**

**I32** Art. 32 in force at 1.5.2020, see [art. 1](#)

*Supplementary*

**Statutory undertakers**

**33.** Subject to the provisions of article 24(2) (compulsory acquisition of rights) and Schedule 10 (protective provisions), the undertaker may—

- (a) exercise the powers conferred by article 22 (compulsory acquisition of land) and article 25 (acquisition of subsoil only) in relation to so much of the Order land as belongs to statutory undertakers;
- (b) extinguish or suspend the rights of or restrictive covenants for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land.

**Commencement Information**

**I33** Art. 33 in force at 1.5.2020, see [art. 1](#)

**Apparatus and rights of statutory undertakers in stopped up streets**

**34.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 11 (street works), article 12 (power to alter layout, etc., of streets), or article 13 (temporary prohibition or restriction of use of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 10 (protective provisions), as if this Order had not been made.

**Commencement Information**

**I34** Art. 34 in force at 1.5.2020, see [art. 1](#)

### Recovery of costs of new connections

**35.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33 (statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 34 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003 <sup>M27</sup>; and

“public utility undertaker” has the same meaning as in the 1980 Act.

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#### Commencement Information

**I35** Art. 35 in force at 1.5.2020, see [art. 1](#)

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#### Marginal Citations

**M27** 2003 c.21.

## 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.

**Commencement Information**

**I36** 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.

**Commencement Information**

**I37** 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>M28</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>M29</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.

**Commencement Information**

**I38** Art. 38 in force at 1.5.2020, see [art. 1](#)

### Marginal Citations

- M28** 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.
- M29** 1974 c.40.

### Protective provisions

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

### Commencement Information

- I39** Art. 39 in force at 1.5.2020, see [art. 1](#)

### 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.

### Commencement Information

- I40** Art. 40 in force at 1.5.2020, see [art. 1](#)

### 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>M30</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**

**I41** Art. 41 in force at 1.5.2020, see [art. 1](#)

**Marginal Citations**

**M30** 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

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**Changes to legislation:** There are currently no known outstanding effects for the The Riverside Energy Park Order 2020. (See end of Document for details)

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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**

**I42** 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.

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**Commencement Information**

**I43** Art. 43 in force at 1.5.2020, see [art. 1](#)

Signed by the authority of the Secretary of State for Business, Energy and Industrial Strategy

Department for Business, Energy and Industrial  
Strategy

*Gareth Leigh*  
Head of Energy Infrastructure Planning



**Changes to legislation:**

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