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## STATUTORY INSTRUMENTS

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# 2020 No. 847

## The Immingham Open Cycle Gas Turbine Order 2020

### PART 5

#### POWERS OF ACQUISITION

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

**27.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take possession of—
  - (i) so much of the land specified in column (1) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule;
  - (ii) any other part of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act 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;
- (d) construct any works specified in relation to that land in column (2) of Schedule 8; and
- (e) carry out or construct any other mitigation works.

(2) Before taking temporary possession of land for a period of time by virtue of sub-paragraph (1) the undertaker must give a notice of intended entry to each of the owners and occupiers of the land, so far as known to the undertaker after making diligent inquiry.

(3) The notice in paragraph (2) must specify—

- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of three months beginning with the day on which the notice is given;
- (b) subject to paragraph (4) the period for which the undertaker is to take temporary possession of the land,

provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(4) 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 [<sup>F1</sup>the 1981 Act or] has otherwise acquired the land subject to temporary possession.

(5) 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.

(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 provisions of 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 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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 (6).

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

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

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in article 21 (compulsory acquisition of rights etc.); or
- (b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 24 (acquisition of subsoil only) or article 26 (rights under or over streets).

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

(12) 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.

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8.

(14) The provisions of the Neighbourhood Planning Act 2017 <sup>F2</sup> do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development or works necessary for the authorised development within the Order land.

**F1** Words in art. 27(4)(b) substituted (17.5.2021) by [The Immingham Open Cycle Gas Turbine \(Correction\) Order 2021 \(S.I. 2021/581\)](#), art. 1, [Sch.](#)

**F2** [2017 c.20](#).

#### **Commencement Information**

**I1** Art. 27 in force at 1.9.2020, see art. 1

**Changes to legislation:**

There are currently no known outstanding effects for the The Immingham Open Cycle Gas Turbine Order 2020, Section 27.