
STATUTORY INSTRUMENTS

2022 No. 1396

**The Keadby 3 (Carbon Capture Equipped
Gas Fired Generating Station) Order 2022**

**PART 3
STREETS**

Street works

9.—(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) as is within the Order limits 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 and keep apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) construct a bridge over the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d) and (e).

(2) The authority given by paragraph (1) is a statutory right or licence 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, sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc., of streets

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

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

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

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

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

(5) If within 28 days of receiving an application for approval under paragraph (3) a highway authority fails to notify the undertaker of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Construction and maintenance of new or altered means of access

11.—(1) Those parts of each means of access specified in Schedule 5 (those parts of the access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period (and following an inspection by the highway authority and it being satisfied with the standard of the highway works including for the avoidance of doubt any remedial works carried out by the undertaker) by and at the expense of the highway authority.

(2) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(3) For the purposes of a defence under paragraph (2), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(4) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways) and the undertaker is not by reason of any duty under that section to maintain a street or to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works with regard to which Part 3 of the 1991 Act apply.

Access to works

12.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 4 (streets subject to permanent alteration of layout);
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a highway authority fails to notify the undertaker of its decision within 28 days of receiving an application under paragraph (1) or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Agreements with street authorities

13.—(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 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 the structure of any bridge or tunnel carrying a street;
- (d) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (e) the undertaking in the street of any of the works referred to in article 11(1) (construction and maintenance of new or altered means of access); or
- (f) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing publicly maintainable highway; or
 - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the 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) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.