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STATUTORY INSTRUMENTS

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**2015 No. 1832**

**The Ferrybridge Multifuel 2 Power Station Order 2015**

**PART 4**

**MISCELLANEOUS AND GENERAL**

**Defence to proceedings in respect of statutory nuisance constituted by noise emitted from premises**

**18.**—(1) Paragraph (2) applies where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(1) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

(2) No order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to that construction or maintenance—
  - (i) in accordance with a notice served under section 60 of the Control of Pollution Act 1974(2) (control of noise on construction sites),
  - (ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction sites) or section 65 of that Act (noise exceeding registered level), or
  - (iii) in compliance with requirement 20 (construction hours), requirement 23(3) (British Standards) or the programme approved under requirement 23(1) (programme for the monitoring and control of construction noise);
- (b) relates to premises used by the undertaker for the purposes of or in connection with the operation of the authorised development and is attributable to that operation in compliance with the programme approved under requirement 24(1) (programme for the monitoring and control of operational noise); or
- (c) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

(3) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) do 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.

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(1) 1990 c. 43.  
(2) 1974 c. 40.

## **Procedures for approvals etc. required by the requirements**

19. Schedule 7 (procedures for approvals etc. required by the requirements) has effect in relation to each approval, consent and agreement required by the requirements.

## **Removal of human remains**

20.—(1) Before the undertaker carries out any development or works which it has reason to think will or may disturb any human remains in the Order land it must remove those remains, or cause them to be removed, from the Order land in accordance with the following provisions of this article.

(2) Before any such remains are removed the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to Wakefield Metropolitan District Council.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of a deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of his or her intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4) and the remains in question can be identified, that person may cause the remains to be—

- (a) removed and re-interred in a burial ground or cemetery in which burials may legally take place, or
- (b) removed to, and cremated in, a crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of a deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land, or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days, or
- (c) within 56 days after an order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains, or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred

in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article the undertaker must send—

- (a) a certificate of re-interment or cremation to the Registrar General, giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) to Wakefield Metropolitan District Council.

(11) The removal of the remains of a deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(3) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

### **Application of landlord and tenant law**

**21.—**(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the authorised development;
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as the agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of an agreement to which this article applies.

(3) No enactment or rule of law regulating the rights and obligations of landlords and tenants applies in relation to the rights and obligations of the parties to any lease granted by or under an agreement to which this article applies so as to—

- (a) exclude or in any respect modify any of the rights or obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

## **Operational land for the purposes of the Town and Country Planning Act 1990**

**22.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990(4) (cases in which land is to be treated as operational land for the purposes of that Act).

### **Certification of documents**

**23.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State a printed copy of each of the documents submitted with the application for this Order and listed in paragraph (2), for certification that it is a true copy of the document referred to in this Order.

(2) The documents are—

- (a) the biodiversity strategy;
- (b) the book of reference;
- (c) the combined heat and power assessment;
- (d) the design and access statement;
- (e) the environmental statement, including the figures and appendices;
- (f) the grid connection statement;
- (g) the indicative generating station site layout, elevations and sections – concept layout;
- (h) the indicative landscaping plan;
- (i) the land plan;
- (j) the landscaping strategy;
- (k) the lighting strategy;
- (l) the Order plan;
- (m) the statement of engagement of section 79(1) of the Environmental Protection Act 1990;
- (n) the statement of reasons;
- (o) the works plans.

(3) A document certified in accordance with paragraph (1) is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Arbitration**

**24.** Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

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(4) 1990 c. 8.