

PROPOSED NEW ARTICLES AND CONSEQUENTIAL AMENDMENTS RELATING TO SECURITY

5 March 2019

1. PROPOSED NEW ARTICLES

Security for CPO compensation

1.1 The following article is proposed to address security for compensation relating to compulsory acquisition:

[83] Guarantees in respect of payment of compensation

83.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (3) in relation to any land within the Order Limits unless—

(a) the Secretary of State has approved in writing a sum of money to cover the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; and

(b) the undertaker has put in place either—

(i) a guarantee for the sum of money that has been approved by the Secretary of State under paragraph 1(a) above; or

(ii) an alternative form of security for the sum of money that has been approved under paragraph 1(a) above.

(2) The undertaker must provide the Secretary of State with such information as he may reasonably require to enable the Secretary of State to determine the adequacy of the sum of money referred to in paragraph 1(a) above, such information to include —

(a) the interests in land affected; and

(b) the undertaker's assessment of the proper level of compensation and its justification for the same.

(3) The provisions are—

(a) Article 25 (Compulsory Acquisition of land);

(b) Article 27 (Compulsory Acquisition of rights);

(c) Article 29 (Private Rights);

(d) Article 31 (Acquisition of subsoil only);

(e) Article 32 (Acquisition of land limited to subsoil lying more than 9 meters beneath the surface);

(f) Article 34 (Rights under or over streets);

(g) Article 35 (Temporary use of land for carrying out the authorised development);

- (h) Article 36 (Temporary use of land for maintaining the authorised development).
- (4) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order 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.
- (5) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 10 years after the date on which the relevant power is exercised.

1.2 Please note that this proposed article has had minor updates from the first draft submitted at Deadline 6. These changes are to clarify the wording of the article.

Security for Project funding

1.3 The following article is proposed to ensure security is approved prior to implementation:

[84] Funding for implementation of the project

- (1) Except for Work No.12, the authorised development must not be commenced unless and until—
 - (a) the undertaker has provided the Secretary of State with written information to enable the Secretary of State to be satisfied that the authorised development is likely to be undertaken and will not be prevented due to difficulties in sourcing and securing the necessary funding; and
 - (b) the Secretary of State has given the undertaker written confirmation that the Secretary of State is satisfied that the authorised development is likely to be undertaken and will not be prevented due to difficulties in sourcing and securing the necessary funding.
- (2) Work No.12 must not be commenced unless and until –
 - (a) the undertaker has provided a guarantee or an alternative form of security, the amount to be approved by the Secretary of State, in respect of liabilities under the restoration scheme approved under Schedule 3 requirement SPC13; or
 - (b) the Secretary of State has given written confirmation under paragraph 1(b) above.

2. PROPOSED AMENDMENTS TO ARTICLE 9 - CONSENT TO TRANSFER BENEFIT OF ORDER

2.1 To avoid the issue raised at the Compulsory Acquisition ISH (5 March 2019) Horizon propose to delete Article 9(4). The amended article would be:

9.—(1) The undertaker may, with the consent of the Secretary of State—

(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed., ~~except where paragraph (4) applies in which case no consent is required from the Secretary of State.~~

(2) Where a transfer or grant been made in accordance with paragraphs (1) ~~and (4)~~ references in this Order to the undertaker, ~~except in 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) ~~and (4)~~ will be subject to the same restrictions, liabilities and obligations (including development consent obligations within the meaning of section 106 of the 1990 Act (planning obligations)) as would apply if those benefits or rights were exercised by the undertaker.

~~(4) The undertaker may make a transfer or grant under paragraph (1) without the consent of the Secretary of State where the transferee or lessee is the holder of a licence under section 3 of the Nuclear Installations Act 1965(a) (grant and variation of nuclear site licences).~~

~~(5) Where paragraph (4) applies the undertaker must notify the Secretary of State in writing before transferring or granting any benefit referred to in paragraph (1).~~

3. PROPOSED AMENDMENTS TO DCO AND CPO TIMEFRAMES

3.1 The following changes are proposed to the timeframes within the draft DCO:

3.2 **Changes to DCO timeframe** – Requirement PW1 to be updated in order to reflect the fact that the undertaker is to have to go through an additional procedure before it can commence the authorised development we have made a small increase in the period to 6 years

3.3 Changes to CPO timeframes – Articles 28 (Time limit for exercise of authority to acquire land compulsorily), 31 (Application of the 1981 Act) and 33 (Modification of the 1965 Act) – in respect of compulsorily acquisition we wish to prevent the situation of implementing the Order and having to compulsorily acquire all of the land and interests immediately rather than at the appropriate time. We therefore propose to extend the period to 8 years to enable landowners to benefit from the land for as long as possible.