

CORRECTION NOTICE

THE ABERGELLI POWER GAS FIRED GENERATING STATION ORDER 2019 (S.I. 2019 No.1268)

SCHEDULE 4 TO THE PLANNING ACT 2008 CORRECTION OF ERRORS IN DEVELOPMENT CONSENT DECISIONS

*** 2020

The Secretary of State received a request dated 16 October 2019 from Pinsent Masons LLP acting on behalf of Abergelli Power Limited ("the Applicant") for the correction of errors and omissions in The Abergelli Power Gas Fired Generating Station Order 2019 ("the Order"), under paragraph (1)(5)(a) of Schedule 4 to the Planning Act 2008.

The Secretary of State has made the following corrections to the Order:

Article 7 (Consent to transfer benefit of this Order)

The Secretary of State has amended paragraph (8) and paragraph (9) of Article 7 to correct the paragraph number under which notice should be given. The numbers in strikethrough are substituted by the numbers underlined:

(8) The notice given under paragraph (~~65~~) 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.

(9) The undertaker must also send a copy of the notice given under paragraph (~~65~~) to the relevant planning authority.

Secretary of State's rationale:

To amend a typographical error.

Article 22 (Compulsory Acquisition of Rights etc.)

The Secretary of State has amended paragraph (1) of Article 22 to substitute the numbers in strikethrough with the numbers underlined:

22.—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article ~~188~~18 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

Secretary of State's rationale:

To correct a typographical error.

Article 26 (Modification of Part 1 of the Compulsory Purchase Act 1965)

The Secretary of State has amended paragraph (2)(a) of Article 26 of the Order to substitute the numbers in strikethrough with the numbers underlined:

(2) In section 4A(1) (extension of time limit during challenge)—

- (a) 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 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article ~~211-21~~ (time limit for exercise of authority to acquire land compulsorily) of the Abergelli Power Gas Fired Generating Station Order 2019”.

The Secretary of State has amended paragraph (4) of Article 26 of the Order to substitute the numbers in strikethrough with the numbers underlined:

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article ~~211-21~~ (time limit for exercise of authority to acquire land compulsorily) of the Abergelli Power Gas Fired Generating Station Order 2019”.

Secretary of State's rationale:

To correct a typographical error.

Article 30 (Statutory undertakers)

The Secretary of State has amended paragraph 30(c) of Article 30 to insert a missing space between the words “rights” and “or” in strikethrough and substitute with the words underlined:

- (a) create and acquire compulsorily the ~~rightsor~~ rights or impose restrictions over any Order land belonging to statutory undertakers.

Secretary of State's rationale:

To correct a typographical error.

Article 32 (Recovery of costs of new connections)

The Secretary of State has amended paragraph (1) and paragraph (3) of Article 32 of the Order to substitute the numbers in strikethrough with the numbers underlined:

32.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article ~~300-30~~ (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus 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 effecting a connection between the premises and any other apparatus from which a supply is given

(2) This article does not have effect in relation to apparatus to which article ~~3131~~ 31 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

Secretary of State's rationale:

To correct a typographical error.

Article 33 (Funding)

The Secretary of State does not agree to amend article 33(2)(b) to reflect the title of Article 20.

Secretary of State's rationale:

Headings/titles in a statutory instrument do not form part of the law and there is no formal legal requirement to amend.

The Secretary of State has amended paragraph 33(2)(d) to correct the article number for "private rights" and substitutes the numbers in strikethrough with the numbers underlined:

(d) article ~~25-23~~ 23 (private rights);

Secretary of State's rationale:

To correct a typographical error.

Article 34 (Felling or lopping of trees and removal of hedgerows)

The Secretary of State has amended Article 34(3) to cross refer to paragraph 1 or 2, and substitutes the wording in strikethrough with the number underlined:

(2) In carrying out any activity authorised by paragraph (1) or ~~paragraph (1)(b)(2)~~, 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.

Secretary of State's rationale:

To correct the reference to 1(b) as this is redundant (as covered in 1) and cross refer to paragraph 1 or 2.

Article 40 (Service of notices)

The Secretary of State has amended paragraph (1)(c) of Article 40 of the Order to substitute the paragraph number in strikethrough with the number underlined:

(c) with the consent of the recipient and subject to paragraphs ~~(65)~~ to (8), by electronic transmission.

Secretary of State's rationale:

To correct a typographical error.

Schedule 2 (Requirements)

The Secretary of State has amended paragraph 10(1) of Schedule 2 (Requirements – Invasive species survey and remediation) to substitute the text in strikethrough with the text underlined:

~~10—(1) Each of the numbered~~ Numbered works 3, 4 and 5 of the authorised development must not commence until an invasive species survey covering the relevant part of the site for that numbered work affected by the relevant work has been undertaken and (where any invasive non–native species are found to be present) a protocol, including an associated management, maintenance and monitoring scheme, has been submitted to and approved in writing by the relevant planning authority. The protocol must detail the containment, control and removal of any species on the relevant part of the site and must be substantially in accordance with the recommendations set out in Appendix F of the outline landscape and ecological mitigation strategy

Secretary of State's rationale:

When granted, the Secretary of State amended the Order (to refer to all numbered works) to reflect the Explanatory Memorandum. The Secretary of State accepts that the Explanatory Memorandum is incorrect given the reference to the specific work numbers 3, 4 and 5 was agreed with the relevant planning authority and set out in the final Order submitted at Deadline 6.

Schedule 8 (Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions)

The Secretary of State has amended the reference to article 26(3) to article 26(4) in paragraph 9 of Schedule 8 and substitutes the text in strikethrough with the text underlined:

“as modified by article ~~26(3)~~26(4) is also modified as to enable the acquiring authority”

Secretary of State's rationale:

This corrects the cross-referencing in relation to modification of section 22 of the Compulsory Purchase Act 1965.

The Secretary of State does not amend any other text that relates to the titles of the sections / paragraphs of legislation in paragraphs 6 to 9 of Schedule 8.

Secretary of State's rationale:

There is no formal requirement to use the exact title under statutory instrument practice and there is no legislative effect.

The validity of the Secretary of State's decision to make these above corrections may be challenged by making an Application to the Planning Court for leave to seek a judicial review. Such an Application must be made as soon as possible and in any event not later than 6 weeks from the date when the Order is published. Parties seeking further information as to how to proceed should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2A 2LL, General Enquiries 020 7947 665.

