

CORRECTION NOTICE

THE WILLINGTON C GAS PIPELINE ORDER 2014 (S.I. NO. 3328)

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

DATE 18 AUGUST 2015

The Secretary of State received a request dated 23 January 2015 from RWE Generation UK plc (“the Applicant”) for the correction of errors in the Willington C Gas Pipeline Order 2014 (“the Order”), under section 119 of, and Schedule 4 to, the Planning Act 2008. This request was further clarified to the Secretary of State in a letter dated 12 May 2015.

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

Corrections to the Articles

Article 2(1) definition of “local highway authority”

Insert at the end of the definition “or any successors to their statutory function as highways authorities”.

Secretary of State’s rationale:

To avoid ambiguity regarding successor bodies.

Article 2(1) definition of “National Grid Electricity”

Insert at the end of the definition “or any successor company performing the same functions”.

Secretary of State’s rationale:

To avoid ambiguity regarding successor companies.

Article 2(1) definition of “National Grid Gas”

Insert at the end of the definition “or any successor company performing the same functions”.

Secretary of State’s rationale:

To avoid ambiguity regarding successor companies.

Heading to article 16

Omit “existing rights in”.

Secretary of State`s rationale:

Consequential on correction made to article 16(1) (see below).

Article 16(1)

Omit “the existing rights in”.

Omit “are” wherever that word occurs and in each case substitute “is”.

Secretary of State`s rationale:

To ensure that the undertaker has the power to acquire the whole of the interests in land comprising reservations of mines and minerals within plots 3, 3B and 4 identified in the Book of Reference and Land Plans, in light of the Applicant’s stated view that is “rights” in land is not the same as “interests” in land.

Article 22(1)

Omit “compulsory acquisition of the existing rights referred to in article 16 (compulsory acquisition of existing rights in land) and the compulsory creation and acquisition” and substitute “creation and compulsory acquisition”.

Omit “that provision” and substitute “those provisions”.

Secretary of State`s rationale:

Consequential on corrections to article 16(1) (see above) and to correct a typographical error. (The correction is not the same as that requested by the Applicant, because the requested correction to article 18(1) has not been made (see below) and because the Secretary of State does not consider that substitution of “such rights” for “the previously-mentioned” aids clarity).

Article 27

Insert after paragraph (a) the following paragraph:

“(aa) impose the restrictive obligations specified in column 3 of Schedule 6 (land over which restrictive obligations and rights of support are required) over the Order land specified in column (2) of that Schedule;”

Secretary of State`s rationale:

To provide clarity on the undertaker’s ability to impose restrictive covenants over statutory undertakers’ land in accordance with the provisions in article 18 and Schedule 6.

Article 33(1)(d)

Omit “UK/PWLC0233/C” and substitute “UKP/WLC/0233/C”

Secretary of State`s rationale:

To correct an incorrect reference.

Corrections to Schedule 1

Part 2, paragraph 1, definitions of “county council”

Insert at the end of the definition “or any successors to their statutory functions as county planning authorities”.

Secretary of State`s rationale:

To avoid ambiguity regarding successor bodies.

Corrections which the Secretary of State has not made

Corrections to the Contents Page

The Applicant proposed the omission of the words underlined below:

- 16. Compulsory Acquisition of existing rights in land.
- 18. Compulsory Acquisition of new rights, etc.

The Secretary of State`s view:

The Contents page is not part of the Order, and it is therefore not possible to make any changes to it through the correctable errors process.

Article 18(1)

The Applicant requested a correction to article 18 deleting the text struck through in the heading below, and reinstating the underlined text in article 18(1) that was included in the final version of the draft Order at the end of the examination stage and removed from the Examiner’s final version of the Order submitted to the Secretary of State:

Compulsory acquisition of ~~new~~ rights, etc.

18.-1The undertaker may acquire compulsorily the existing rights and acquire compulsorily new rights over those parts of the Order land specified in column (1) of Schedule 5 (land in which only new rights, etc. may be acquired) as may be required for the purpose specified in relation to that land in column (2) of that Schedule or as

may be required for facilitating the construction of, or are incidental to the authorised development”.

The Applicant states in their letter of 12 May 2015 that the correction is required to allow for the compulsory acquisition of “the existing rights”, which the Applicant states are the rights “detailed in Part 1a of the Book of Reference”. Further, in an email to the Secretary of State dated 24 June 2015, the Applicant states that “it is a special concern that [the Applicant] is able to acquire outright the manorial rights in plots 1 and 2”.

The Secretary of State’s view:

The Secretary of State does not consider that it was clearly stated during the examination that the Applicant wished to be granted the power to acquire compulsorily any existing rights detailed in Part 1a of the Book of Reference (other than the power to acquire outright the manorial rights reserved in respect of plots 3, 3B and 4, which is dealt with in article 16).¹ When dealing with the issue of the compulsory acquisition outright of manorial rights in paragraph 6.40 of his Report, the Examiner referred only to plots 3, 3B and 4.

The Secretary of State therefore considers that the draft Order submitted to the Secretary of State by the Examiner following the close of the examination, which does not include the text underlined above, properly reflects the Examiner’s intention and understanding. Accordingly, the Secretary of State does not consider it is within the scope of Schedule 4 to correct the Order to achieve the Applicant’s intended effect. Nor would it be appropriate to consider the alternative corrections to the Book of Reference proposed by the Applicant to achieve the same effect.

Schedule 5

The Applicant requested that “maintain” be defined for the purposes of Schedule 5 in the same terms as it is defined in article 2 or, alternatively, that footnote (a) be corrected to provide certainty that the definition of “maintain” applies to all plots of land described in Schedule.

The Secretary of State’s view:

It is unnecessary to define “maintain” for the purposes of Schedule 5 in exactly the same terms as it is defined in article 2, as the definition in that article applies throughout the Order, including throughout Schedule 5. (The footnote is not part of the Order, and it is therefore not possible to make any changes to it through the correctable errors process.)

¹ For example, in answer to the question “What are the rights and interests being acquired by compulsory acquisition?” the Applicant responded: “These can be divided into four groups: (a) Under art 16: Manorial rights in plots 3, 3B and 4. These plots are found at the location of the proposed Yoxall Above Ground Installation (AGI). The rights are of unknown ownership and must therefore be acquired compulsorily. (b) Under art 18, 22 and 27: new rights in the subsoil of land where the pipe will be located. (c) Under art 18 and 27: rights of access for construction and maintenance (see schedules 5 of the DCO). (d) Under art 18: restrictive covenants (see schedule 6 of the DCO)”. (Compulsory Acquisition Hearing – Updated Outline of Compulsory Acquisition Strategy (12 March 2014, Compulsory Acquisition Hearing, Agenda Item 3).)

Schedule 6

The Applicant requested that the provisions of the Order referred to in the heading to Schedule 6 be corrected to reflect the correction made to article 27 (see above).

The Secretary of State's view:

It is unnecessary for the correction to be made as the references have no legal effect.