*Draft Order laid before Parliament under section 232(6) of the Planning Act 2008, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2013 No. 0000

# INFRASTRUCTURE PLANNING
# TRANSPORT

## The Highway and Railway (Nationally Significant Infrastructure Project) Order 2013

*Made - - - - 2013*

*Coming into force in accordance with article 1*

The Secretary of State for Transport makes the following Order in exercise of the powers conferred by sections 14(3) and (4) and 232(3) of the Planning Act 2008(**1**).

A draft of this Order has been laid before Parliament and has been approved by a resolution of each House of Parliament in accordance with section 232(6) of that Act.

### Citation and commencement

**1.**—(1) This Order may be cited as the Highway and Railway (Nationally Significant Infrastructure Project) Order 2013.

(2) This Order comes into force on the day after the day on which it is made.

### Interpretation

**2.** In this Order "the Act" means the Planning Act 2008.

### Amendments to section 22 of the Planning Act 2008

**3.** For section 22 of the Act (highways) substitute—

"**Highways**

**22.**—(1) Highway-related development is within section 14(1)(h) only if the development is—

(a) construction of a highway in a case within subsection (2),

(**1**) 2008 c. 29. There are amendments which are not relevant to this Order.

(b) alteration of a highway in a case within subsection (3), or

(c) improvement of a highway in a case within subsection (5).

(2) Construction of a highway is within this subsection only if—

(a) the highway will (when constructed) be wholly in England,

(b) the Secretary of State will be the highway authority for the highway, and

(c) the area of development is greater than the relevant limit set out in subsection (4).

(3) Alteration of a highway is within this subsection only if—

(a) the highway is wholly in England,

(b) the Secretary of State is the highway authority for the highway, and

(c) the area of development is greater than the relevant limit set out in subsection (4).

(4) For the purposes of subsections (2)(c) and (3)(c) the relevant limit —

(a) in relation to the construction or alteration of a motorway, is 15 hectares,

(b) in relation to the construction or alteration of a highway, other than a motorway, where the speed limit for any class of vehicle is expected to be 50 miles per hour or greater, is 12.5 hectares, and

(c) in relation to the construction or alteration of any other highway is 7.5 hectares.

(5) Improvement of a highway is within this subsection only if—

(a) the highway is wholly in England,

(b) the Secretary of State is the highway authority for the highway, and

(c) the improvement is likely to have a significant effect on the environment.

(6) Highway-related development does not fall within section 14(1)(h) if—

(a) an order mentioned in section 33(4) has been made in relation to the development before 1 March 2010,

(b) a further order is needed in relation to the development, and

(c) not more than 7 years have elapsed since the making of the earlier order.

(7) Alteration of a highway is not within section 14(1)(h) if

(a) planning permission has been granted for a development,

(b) the alteration is necessary as a result of the development, and

(c) the developer has asked for the alteration to be made to the highway.

(8) Alteration of a highway is not within section 14(1)(h) if—

(a) an order mentioned in section 33(4) has been made in relation to local highway works,

(b) the alteration is necessary as a result of the local highway works, and

(c) the local highway authority responsible for the local highway works has asked for the alteration to be made to the highway.

(9) In this section—

"area of development" —

(a) in relation to construction of a highway, means the land on which the highway is to be constructed and any adjoining land expected to be used in connection with its construction;

(b) in relation to alteration of a highway, means the land on which the part of the highway to be altered is situated and any adjoining land expected to be used in connection with its alteration;

"local highway authority" has the meaning given by section 329(1) of the Highways Act 1980(**2**);

"local highway works" means works carried out by or on behalf of a local highway authority in relation to a highway for which it is the highway authority (and the local highway authority is referred to in this section as "responsible" for those works);

"motorway" means a highway which is a special road in accordance with section 16 of the Highways Act 1980.".

**Amendments to section 25 of the Planning Act 2008**

**4.**—(1) Section 25 of the Act (railways) is amended as follows.

(2) In subsection (1) after paragraph (b) (but before the "and") insert—

"(ba) the railway will (when constructed) include a stretch of track that—

(i) is a continuous length of more than 2 kilometres, and

(ii) is not on land that was operational land of a railway undertaker immediately before the construction work began or is on land that was acquired at an earlier date for the purpose of constructing the railway,".

(3) In subsection (2) after paragraph (b) (but before the "and") insert—

"(ba) the alteration of the railway will include laying a stretch of track that—

(i) is a continuous length of more than 2 kilometres, and

(ii) is not on land that was operational land of a railway undertaker immediately before the alteration work began or is on land that was acquired at an earlier date for the purpose of the alteration,".

(4) After subsection (2) insert—

"(2A) Construction or alteration of a railway is not within section 14(1)(k) to the extent that it takes place on the operational land of a railway undertaker unless that land was acquired for the purpose of the construction or alteration."

(5) In subsection (7) at the appropriate places insert—

""operational land" has the same meaning as in the TCPA 1990(**3**);";

""railway undertaker" has the same meaning as in Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995(**4**);".

(6) In subsection (8), for "The reference in subsection (7)" substitute "In the definition of "permitted development" in subsection (7), the reference".

(**2**) 1980 c.66. There are amendments to section 329(1) which are not relevant to this Order. Section 16 is amended by the Planning Act 2008, Schedule 2, paragraphs 21 and 24.

(**3**) Section 234 of the Act defines "TCPA 1990" as meaning the Town and Country Planning Act 1990 c. 8. Section 263 read with section 264 of the TCPA 1990 defines "operational land". Section 263 has been amended but the amendments are not relevant to this Order. Section 264(4A) and (4B) were inserted by the Transport for London (Consequential Provisions) Order 2003 (2003/1615), Schedule 1, Part 1, paragraph 14; subsection 5(b) was amended by the Planning and Compulsory Purchase Act 2004 (2004 c. 5), section 40(2)(k) and further amended by the Localism Act 2011 (2011 c. 20), Schedule 12, paragraph 20(a) and by Schedule 25, Part 18; subsection 5(ca) was inserted by the Localism Act 2011, Schedule 12, paragraph 20(b). There are other amendments but they are not relevant to this Order.

(**4**) S.I. 1995/418 to which there are amendments not relevant to this Order.