

**EXPLANATORY MEMORANDUM TO
THE ROOKERY SOUTH (RESOURCE RECOVERY FACILITY) ORDER 2011**

2011 No. insert

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The instrument is concerned with a proposal to develop an electricity generating station fuelled by waste and a post-combustion materials recovery facility to treat incinerator bottom ash at Rookery South Pit, Stewartby, Bedfordshire (“the Project”).
 - 2.2 The purpose of the instrument is:
 - (a) to enable the Project to be constructed and operated in conformity with the Planning Act 2008 (“the 2008 Act”);
 - (b) to authorise the compulsory acquisition of land and rights over land in connection with the construction and operation of the Project;
 - (c) to make provision for various ancillary matters in connection with the Project.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 The instrument is the first development consent order made under the 2008 Act. It was made by the Panel (“the Panel”) appointed by the Chair of the Infrastructure Planning Commission (“IPC”) to examine and decide the application for development consent submitted to the IPC in respect of the Project (“the Application”). Because it is subject to the special parliamentary procedure the instrument is being laid before Parliament by the Secretary of State for Energy and Climate Change (“the Secretary of State”): see further section 4 below.
4. **Legislative Context**
 - 4.1 The construction and operation of the Project constitutes a nationally significant infrastructure project, as defined in the 2008 Act. As such it needs to be granted development consent by means of a development consent order (“DCO”) made under Chapter 8 of Part 6 of the 2008 Act before it can proceed. The instrument is a DCO. The grant of development consent means that planning permission and certain other forms of consent which would otherwise be required for a nationally significant infrastructure project are not required (section 33 of the 2008 Act). A DCO can also authorise compulsory acquisition of land or rights over land and make provision for matters ancillary to the development for which consent is granted (see sections 120 and 122 of the 2008 Act).
 - 4.2 Under the 2008 Act, a DCO is made by the IPC Panel or Commissioner responsible for examining an application for development consent if a national policy statement

within the meaning of the 2008 Act has effect in relation to development of the description to which the application relates. Where a national policy statement does not have effect, the Panel or Commissioner produces a report and recommendation to the Secretary of State, who determines the application.

- 4.3 In the case of the Project, two national policy statements have effect. These are National Policy Statements EN-1 (*Overarching National Policy Statement for Energy*) and EN-3 (*National Policy Statement for Renewable Energy Infrastructure*), designated under the 2008 Act by the Secretary of State for Energy and Climate Change following their approval by Parliament in July 2011 (available at http://www.decc.gov.uk/en/content/cms/meeting_energy/consents_planning/nps_en_infra/nps_en_infra.aspx). Accordingly, under the 2008 Act the IPC has full powers to make a DCO in respect of the Project, and the Secretary of State has no determinative functions in relation to it.
- 4.4 Under Part 5 of the 2008 Act, the Application was submitted to the IPC. The Application was then examined by the Panel under Part 6 of the 2008 Act. The Panel published its decision to grant development consent and make a DCO in respect of the Project on 13th October 2011 and made the instrument on 22nd November 2011.
- 4.5 Although the instrument is therefore entirely the work of the IPC, the Secretary of State has two functions in relation to it.
 - (a) The instrument includes provisions made under s. 120(5), which enables DCOs to make a range of provisions relating to the application of statutory provisions. Where it is proposed that a DCO should include such provisions, the Secretary of State must consider their compatibility with Community law and the Convention rights. Pursuant to s. 121, the Secretary of State stated that he did not think that the provisions proposed to be made in the instrument under s. 120(5) contravened Community law or the Convention rights.
 - (b) As explained further below, the Secretary of State is responsible for laying the instrument before Parliament.
- 4.6 The instrument authorises compulsory acquisition of land and rights over land. Some of the land concerned is the property of Bedford Borough Council, and some of it has been acquired by Eastern Power Networks plc for the purposes of its undertaking. These organisations are, respectively, a local authority and a statutory undertaker for the purposes of s. 128 of the 2008 Act, and since they made, and did not withdraw, representations about the Application, and the Application was not made by a statutory undertaker, the instrument is subject to the special parliamentary procedure.
- 4.7 Under the Statutory Orders (Special Procedure) Act 1945 (“the 1945 Act”), orders subject to special parliamentary procedure must be laid by the Minister responsible for laying them (ss. 2(2) and 11(1)). As already noted, the instrument was neither made nor confirmed by a Minister, but in the absence of provision for the IPC to lay its own order under the 1945 Act, this function of laying the instruments falls to the Secretary of State, in particular on the basis that if the instrument were not to be approved by the joint committee under the 1945 Act, it would fall to the Secretary of

State, rather than the IPC to take forward any Bill to confirm it, since that would be a public, rather than a private Bill.

5. Territorial Extent and Application

- 5.1 The instrument is a local instrument which applies in relation to the area where the Project and related works specified in the instrument are to be located.

6. European Convention on Human Rights

Charles Hendry, the Minister of State for Energy, has made the following statement regarding Human Rights:

In my view the provisions of the Rookery South (Resource Recovery Facility) Order 2011 are compatible with the Convention rights.

7. Policy background

- 7.1 The policy underlying the system of DCOs established by the 2008 Act is to combine, in a single process of application, examination and granting of consent, provision for a number of aspects of major infrastructure projects that would otherwise require separate consents and procedures, notably development consent and compulsory purchase.
- 7.2 The policy background relating to the consenting of energy from waste projects with a capacity of more than 50MW is set out in the national policy statements referred to in paragraph 4.3 above. The reasons for the Panel's decision to grant development consent for the Project are set out in its statement of reasons, which is available on the IPC's website at <http://infrastructure.independent.gov.uk/projects/eastern/rookery-south-energy-from-waste-generating-station/>.

8. Consultation outcome

- 8.1 As required by the 2008 Act, there was consultation on the Project before the Application was submitted. Further publicity and opportunities for interested parties to comment followed submission of the Application, as prescribed by the 2008 Act. A large number of interested parties took advantage of opportunities both to comment in writing and to attend hearings held by the Panel on various aspects of the Project (see in particular sections C, D and E of Appendix C to the Panel's statement of reasons, available from the webpage referred to in paragraph 7.2 above).

9. Guidance

- 9.1 Not applicable.

10. Impact

- 10.1 Not applicable.

11. Regulating small business

11.1 Not applicable.

12. Monitoring & review

12.1 The 2008 Act makes provision for changes to be made to DCOs, and for them to be revoked on a case-by-case basis (see Schedule 6). However, it is not proposed that there should be any systematic review of individual DCOs, as opposed to a review of the efficacy of the 2008 Act regime generally (which the Secretary of State for Communities and Local Government has stated that he plans to carry out, but not before 2014). The instrument provides for a number of more detailed planning matters to be agreed with the relevant local planning authorities, who are also responsible for enforcing compliance with it under the 2008 Act.

13. Contact

13. Gareth Leigh at the Department of Energy and Climate Change. Tel: 0300 068 5677 or email: gareth.leigh@decc.gsi.gov.uk can answer any queries regarding the instrument.