
STATUTORY INSTRUMENTS

2014 No. 2384

The Thames Water Utilities Limited
(Thames Tideway Tunnel) Order 2014

PART 2

WORKS PROVISIONS

Principal powers

Development consent etc. granted by the Order

3. Subject to the provisions of this Order and to Schedule 3 (requirements) and Schedule 16 (protective provisions) to this Order the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works;

to be carried out within the Order limits and in accordance with the approved plans.

Authorisation of use

4. Subject to the provisions of this Order and to the requirements the undertaker may operate and use the authorised project for the purposes for which it was designed.

Maintenance of authorised project

5. The undertaker may at any time maintain the authorised project, except to the extent that this Order provides otherwise, and for the avoidance of doubt the power of maintenance provided by this article does not constitute the grant of development consent for any development not authorised by article 3 (development consent etc. granted by this order).

Limits of Deviation

6.—(1) In constructing or maintaining works 1a to 1d, 3b, 4b, 5b, 7, 10b, 11b, 12b, 14b, 15b, 16b and 20, the undertaker may deviate—

- (a) laterally from the lines, situations or positioning of the authorised development shown or indicated on the works plans to the extent of the limits of deviation shown on the works plans; and
- (b) vertically from the levels of the authorised development shown on the sections to any extent—
 - (i) not exceeding 3 metres upwards; or
 - (ii) downwards as may be found to be necessary or convenient.

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(1) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of Section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction of the authorised project and associated activities up to completion of construction and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or
- (b) is a consequence of complying with a requirement of this Order and that it cannot reasonably be avoided; or
- (c) is a consequence of the construction of the authorised project before completion of construction and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

(3) The defence in this article shall not have effect after completion of construction.

Benefit of order

Benefit of Order

8. Subject to article 9 (transfer of benefit of Order), the provisions of this Order shall have effect solely for the benefit of Thames Water Utilities Limited (save where the context requires otherwise) and any successor under a special administration order or otherwise.

Transfer of benefit of Order

9.—(1) The undertaker may transfer to an infrastructure provider any or all of the benefit of the provisions of this Order (save for the powers of compulsory acquisition in articles 28 (compulsory acquisition of land), 29 (compulsory acquisition of rights), 30 (acquisition of subsoil only), 31 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and 41 (acquisition of part of certain properties)) and such related rights for such period as may be necessary for the construction, operation or maintenance of the authorised project as may be agreed between the undertaker and the infrastructure provider.

(2) Notwithstanding any transfer under paragraph (1) above the undertaker may with the consent of the Secretary of State transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (save for the powers of compulsory acquisition in articles 28 (compulsory acquisition of land), 29 (compulsory acquisition of rights), 30 (acquisition of subsoil only), 31 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and 41 (acquisition

(1) 1990 c.43. section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c.40), section 106 of and Schedule 17 to the Environment Act 1995 (c.25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16). There are other amendments to this section which are not relevant to this Order.

of part of certain properties)) and such related rights for such period as may be necessary for the construction, operation or maintenance of the authorised project as may be agreed between the undertaker and the transferee.

(3) Where a transfer has been made in accordance with paragraph (1) or (2) references in this Order to the undertaker, except in paragraphs (1) and (4), shall include references to the infrastructure provider or transferee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer under paragraph (1) or (2) shall—

- (a) be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by Thames Water Utilities Limited; and
- (b) not prevent Thames Water Utilities Limited benefitting from those provisions of this Order notwithstanding that those provisions may also benefit the infrastructure provider or transferee.

(5) In determining an application for consent under paragraph (2) the Secretary of State shall have regard to—

- (a) the importance of ensuring that the transferee has the necessary financial and other resources to undertake the authorised project in accordance with the restrictions, liabilities and obligations specified in paragraph (4)(a); and
- (b) the need to secure (by way of performance bond or other measure) the performance by the transferee of its functions under this Order.

Streets and traffic regulations

Street works

10.—(1) The undertaker may, for the purposes of the authorised project, other than in respect of specified works subject to the LoPS as applied by the highway authority in whose area the undertaker seeks to carry out such works, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street, or carry out works to strengthen or repair the carriageway;
- (c) place and keep apparatus in or on the street;
- (d) maintain, renew or alter the position of apparatus in or on the street or change its position;
- (e) demolish, remove, replace and relocate any bus shelter and associated bus stop infrastructure;
- (f) execute any works to provide or improve sight lines required by the highway authority;
- (g) execute and maintain any works to provide hard and soft landscaping;
- (h) carry out re-lining and placement of new temporary markings; and
- (i) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (h) above.

(2) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent shall not be unreasonably withheld, the undertaker may, for the purposes of the authorised project, other than in respect of specified works subject to the LoPS as applied by the highway authority in whose area the undertaker seeks to carry out such works, enter on so much of any other street whether or not within the Order limits, for the purposes set out at paragraph (1) (a) to (i) (street works) and article 51(2) (miscellaneous provisions relating to the 1990 Act) shall apply.

(3) The authority given by paragraph (1) or (2) is a statutory right for the purposes of sections 48(3) (*streets, street works and undertakers*) and 51(1) (*prohibition of unauthorised street works*) of the 1991 Act (2).

(4) The provisions of sections 54 to 106 (save insofar as disappplied through the operation of article 56 (*application, disapplication and modification of legislative provisions*) and Schedule 19 (*miscellaneous controls*) part 1 to this Order) of the 1991 Act (3) apply to any street works carried out under paragraph (1) or (2).

(5) In Part 3 of the 1991 Act, provisions relating to major highway works which refer to the highway authority concerned shall, in relation to works which are major highway works, be construed as references to the undertaker.

(6) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

(7) The undertaker may not exercise the powers under this article after completion of construction.

Power to alter layout, etc., of streets

11.—(1) The undertaker may for the purposes of constructing the authorised project, other than in respect of specified works subject to the LoPS as applied by the highway authority in whose area the undertaker seeks to carry out such works, alter the layout of each of the streets specified in column (2) of Schedule 5 (streets subject to alteration of layout) (and carry out works ancillary to such alteration) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by article 3 or paragraph (1) but subject to paragraph (3), the undertaker may, for the purposes of either constructing the authorised project or for works before completion of construction, other than in respect of specified works subject to the LoPS as applied by the highway authority in whose area the undertaker seeks to carry out such works, alter the layout of any other street (and carry out works ancillary to such alteration) whether or not within the Order limits and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track, verge, or central reservation within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track, verge, or central reservation;
- (c) reduce the width of the carriageway of the street;
- (d) execute any works to widen or alter the alignment of pavements;
- (e) execute any works of surfacing or re-surfacing of the highway; and
- (f) execute any works necessary to alter existing facilities for the management and protection of pedestrians.

(3) The powers conferred by paragraph (2)—

- (a) shall be exercisable on the giving of not less than 42 days’ notice to the street authority; and
- (b) shall not be exercised without the consent (such consent not to be unreasonably withheld) of the street authority but such consent may be granted subject to reasonable conditions relating to highway matters.

(2) Section 51 is amended by section 40 of and Schedule 1 to the Traffic Management Act 2004 (c.18).

(3) Sections 54 to 106 are amended by Schedule 7 to the Road Traffic Act 1991 (c.40), Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60), sections 255 and 256 of the Transport Act 2000 (c.38), sections 40 to 64 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18), Schedule 3 to the Flood and Water Management Act 2010 (c.29), and regulation 17 of S.I. 2007/1951; there are other amendments that are not relevant to this Order.

(4) In Part 3 of the 1991 Act, provisions relating to major highway works which refer to the highway authority concerned shall, in relation to works which are major highway works, be construed as references to the undertaker.

(5) The provisions of sections 54 to 106 (save insofar as disapplied through the operation of article 55 (application, disapplication and modification of legislative provisions) and Schedule 19 (miscellaneous controls) part 1 to this Order) of the 1991 Act apply to works carried out under paragraph (1) or (2) to the extent that those works involve the breaking up or opening of a street, or any sewer, drain, or tunnel under it, or tunnelling or boring under a street

(6) The undertaker may not exercise the powers under this article after completion of construction.

Construction and maintenance of altered streets

12.—(1) Any street (other than any private streets) to be constructed under this Order shall be completed to the reasonable satisfaction of the street authority and shall, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(2) Where a street is altered under this Order, the altered part of the street shall be completed to the reasonable satisfaction of the street authority and shall, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Where new land not previously part of the public highway is to form part of the public highway further to the provisions of this Order it shall, unless otherwise agreed with the street authority, be deemed as dedicated as part of the public highway on the expiry of a period of 12 months from its completion.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court shall in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(6) In determining who is the street authority in relation to a street for the purposes of Part III of the New Roads and Street Works Act 1991, any obligation of the undertaker to maintain the street under paragraph (1) or (2) shall be disregarded.

Stopping up of streets

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in column (2) of Schedule 6 (*streets to be stopped up*) to the extent specified in column (3) of that Schedule and shown on the relevant access plan.

(2) No street specified in column (2) of Schedule 6 (being a street to be stopped up) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (3) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(3) The condition referred to in paragraph (2) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(4) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) the undertaker may use for the purposes of the authorised project so much of the street as is stopped up under paragraph (1).

(5) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article is subject to article 43 (*apparatus and rights of statutory undertakers in stopped up streets*).

Public rights of way and permissive paths

14.—(1) The public rights of way and permissive paths listed in column (2) of Schedule 7 (*public rights of way and permissive paths to be extinguished*) shown marked on the relevant access plans shall be extinguished—

- (a) once the undertaker has provided the alternative way or path as indicated on the access plans; and
- (b) as at the expiry of the notice given further to paragraph (2) of this article.

(2) No less than 28 days prior to the extinguishment of each of the public rights of way and permissive paths listed in column (2) of Schedule 7 shown marked on the relevant access plans the undertaker shall erect a site notice at each end of the section to be extinguished (as set out in column (3) of Schedule 7).

(3) Subject to the consent of the owner and occupier of any affected land, the undertaker and the local highway authority may agree that the alternative way or path to be provided under this article shall take a different route or have a different legal status than that indicated on the access plans; and a way or path provided in accordance with such agreement shall be taken to have been provided in accordance with the access plans for the purposes of paragraph (2).

(4) For the purposes of paragraph (1), the undertaker shall be taken to have provided the alternative way or path when –

- (a) the way or path has been completed:
 - (i) in accordance with any obligation under article 12 to complete the way or path to the reasonable satisfaction of the street authority, or
 - (ii) if no such obligation arises, to the reasonable satisfaction of the local highway authority.

Temporary stopping up

15.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street, any other public right of way, any city walkway, or permissive path whether or not within the Order limits and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street, public right of way, city walkway, or permissive path; and
- (b) subject to paragraph (2), prevent all persons from passing along the street, public right of way, city walkway, or permissive path.

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street, public right of way, city walkway, or permissive path affected by the temporary stopping up, alteration or diversion of a street, public right of way, city walkway, or permissive path under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets, public rights of way, city walkways and permissive paths specified in column (2) of Schedule 8 (*streets and rights of way etc. to be temporarily stopped up*) to the extent specified in column (3) of that Schedule.

(4) The undertaker shall not temporarily stop up, alter or divert—

- (a) any street, public right of way, city walkway or permissive path specified as mentioned in paragraph (3) without first consulting either the street authority or (in the case of a city walkway) the city walkway authority; or
- (b) any other street, public right of way, city walkway or permissive path without the consent of either the street authority or (in the case of a city walkway) the city walkway authority, which may attach reasonable conditions to any consent, but which consent shall not be unreasonably withheld.

(5) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) The undertaker may not exercise the powers under this article after completion of construction.

Access to works

16.—(1) The undertaker may, for the purposes of the construction, use and or maintenance of the authorised project, other than in respect of specified works subject to the LoPS as applied by the highway authority in whose area the undertaker seeks to carry out such works—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in column (2) of Schedule 9 (*access to works*) for the purposes specified in column (3) of Schedule 9; and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

(2) The relevant planning authority may attach any reasonable conditions to any approval given under paragraph (1)(b).

(3) The undertaker may not exercise the powers under this article after completion of construction.

Agreements with street authorities

17.—(1) The undertaker may enter into agreements with a street authority or (in the case of a city walkway) the city walkway authority with respect to—

- (a) the construction of any new street or city walkway including any structure carrying the street or city walkway whether or not over or under any part of the authorised project;
- (b) the strengthening, improvement, repair or reconstruction of any street or city walkway under the powers conferred by this Order;
- (c) any stopping up, alteration or diversion of a street or city walkway authorised by this Order;
- (d) the carrying out in the street of any of the works referred to in article 10(1) (*street works*) or their maintenance;
- (e) the alteration of any street further to article 11(1) or (2) (*power to alter the layout etc of streets*); or
- (f) such other works as the parties may agree.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority or the city walkway authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority or the city walkway authority specifying a reasonable time for completion of the works;
- (c) provide for the dedication of any new street as public highway further to section 38 of the 1980 Act;
- (d) provide for any new way to be declared as city walkway in accordance with the City of London (Various Powers) Act 1967;
- (e) contain such terms as to payment as the parties consider appropriate; and
- (f) contain such other terms as the parties may agree between them.

Traffic regulation

18.—(1) Subject to the provisions of this article, the undertaker may at any time for the purposes of the—

- (a) construction of the authorised project temporarily regulate traffic further to part 1 of Schedule 10 (*traffic regulation*), and
- (b) construction, operation or maintenance of the authorised project permanently regulate traffic further to part 2 of Schedule 10 (*traffic regulation*),

in the manner specified in column (4) on those roads specified in column (2) and along the lengths and between the points specified, or to the extent otherwise described in column (3) of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the traffic authority in whose area the road concerned is situated, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation, or maintenance of the authorised project —

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
 - (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
 - (c) authorise the use as a parking place of any road;
 - (d) make provision as to the direction or priority of vehicular traffic on any road; and
 - (e) permit or prohibit vehicular access to any road;
- either at all times or at times, on days or during such periods as may be specified by the undertaker.
- (3) The undertaker shall not exercise the powers in paragraphs (1) and (2) unless it has—
 - (a) given not less than 4 weeks’ notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
 - (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of the traffic authority’s receipt of notice of the undertaker’s intention under sub-paragraph (a).
 - (4) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (2) shall—
 - (a) have effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act; and
 - (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement).
 - (5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time.
 - (6) Before complying with the provisions of paragraph (3) the undertaker shall consult the chief officer of police and the traffic authority in whose area the road is situated.
 - (7) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.
 - (8) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority shall (unless the parties agree otherwise) be deemed to have refused consent.
 - (9) The undertaker may not exercise the power in paragraph 18(1)(a) or 18(2) after completion of construction.

Supplemental powers

Discharge of water

19.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(right to communicate with public sewers).

(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, and such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river, unless otherwise authorised by this Order.

(6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by Regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010(4).

(8) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person shall be deemed to have refused consent or approval, as the case may be.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency or a harbour authority within the meaning of section 57 of the Harbours Act 1964(5) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(6) have the same meaning as in that Act.

Protective works to buildings and structures

20.—(1) Save as otherwise agreed pursuant to article 20 (13), subject to the following provisions of this article, the undertaker may at its own expense carry out the protective works to any building listed in Schedule 11 (*Protective works*) to this Order which the undertaker considers necessary or expedient.

(2) The protective works may be carried out further to paragraph (1) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey—

- (a) any building to which the power in paragraph (1) applies and any land within the Order limits; and

(4) [S.I. 2010/675](#)

(5) [1964 c.40](#); there are amendments to section 57 that are not relevant to this Order.

(6) [1991 c.57](#)

(b) where reasonably necessary, any land which is adjacent to the building but outside the Order limits.

(4) For the purpose of carrying out the protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within the Order limits; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside the Order limits, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3)(a) to enter a building and land within the Order limits;
- (c) a right under paragraph 3(b) to enter land;
- (d) a right under paragraph (4)(a) to enter a building and land within the Order limits; or
- (e) a right under paragraph (4)(b) to enter land,

the undertaker shall serve on the owners and occupiers of the building or land not less than 14 days notice of its intention to exercise that right and, in a case falling within sub-paragraph (a), (d) or (e), specifying the planned protective works proposed to be carried out, as listed in Schedule 11 (*Protective works*) to this Order. Such notice must contain a statement which notifies the recipient of his right under paragraph (6) to make a referral to arbitration.

(6) Where a notice is served under paragraph (5)(a), (d) or (e), the owner and or occupier of the building or land concerned may, by serving a counter-notice within the period of 14 days beginning with the day on which the notice was served, require any issue as to whether the protective works proposed by the undertaker are sufficient to fulfil their purpose, or it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 63 (*arbitration*).

(7) The undertaker shall compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Without prejudice to the power to undertake remedial works, under article 21 (*remedial works to buildings, or apparatus or equipment*), where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the authorised project carried out in the vicinity of the building first comes into use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project,

the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means those works listed in Schedule 11 (*protective works*) and any other works the purpose of which is to prevent damage which may be caused to the building listed, which may include monitoring, underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused by the carrying out, maintenance or use of the authorised project.

(12) Without prejudice to the definition in article 2 (*interpretation*) the definition of “building” shall for the purposes of this article include those buildings, structures, apparatus and equipment listed in Schedule 11 (*protective works*).

(13) The undertaker may enter into an agreement or agreements in respect of protective works with any owner or occupier (with the requisite consent of the owner) of a building to which this article applies or of any other building likely to be affected by the authorised project and such agreement shall have the effect (as between those parties only) of regulating the powers in this article, insofar as they incorporate, add to, omit or modify the provisions of this article or any of them.

Remedial works to buildings, or apparatus or equipment

21.—(1) Save as otherwise agreed pursuant to article 21(14), subject to the following provisions of this article, the undertaker may at its own expense carry out remedial works to any land, building, apparatus or equipment which may be affected by the authorised project (whether or not within the Order limits), as the undertaker considers necessary or expedient.

(2) Remedial works may be carried out further to paragraph (1)—

- (a) at any time before or during the carrying out in the vicinity of the land or building of any part of the authorised project; or
- (b) after the completion of that part of the authorised project in the vicinity of the land or building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project first comes into use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey—

- (a) any land or building falling within paragraph (1) and any land within the Order limits; and
- (b) where reasonably necessary any land which is adjacent to the land or building but outside the Order limits.

(4) For the purpose of carrying out remedial works under this article to land or a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the land or building and any land within the Order limits; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the land or building but outside the Order limits, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out remedial works to land or a building;
- (b) a right under paragraph (3)(a) to enter land or a building and land within the Order limits;
- (c) a right under paragraph 3(b) to enter land;
- (d) a right under paragraph (4)(a) to enter land or a building and land within the Order limits; or
- (e) a right under paragraph (4)(b) to enter land,

the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days notice of its intention to exercise that right and, in a case falling within sub-paragraph (a), (d) or (e), together with any appropriate plans specifying the remedial works proposed to be carried out. Such notice must contain a statement which notifies the recipient of his right under paragraph (6) to make a referral to arbitration.

(6) Where a notice is served under paragraph (5)(a), (d) or (e), the owner and or occupier of the building or land concerned may, by serving a counter-notice within the period of 14 days beginning with the day on which the notice was served, require any issue as to whether the remedial works proposed by the undertaker are sufficient to fulfil their purpose, or it is necessary or expedient to

carry out the remedial works or to enter the building or land to be referred to arbitration under article 63 (*arbitration*).

(7) The undertaker shall compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) remedial works are carried out under this article to land or a building; and
- (b) within the period of 5 years beginning with the day on which the authorised project carried out in the vicinity of the land or building first comes into use it appears that the remedial works are inadequate to protect the land or building against damage caused by the carrying out or use of that part of the authorised project,

the undertaker shall compensate the owners and occupiers of the land or building for any loss or damage sustained by them.

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “remedial works” in relation to land or a building means any monitoring or works the purpose of which is to remedy any damage which has been caused, or prevent any further damage which may be caused, by the carrying out, maintenance or use of the authorised project.

(12) Without prejudice to the definition in article 2 (*interpretation*) the definition of “building” shall for the purposes of this article include apparatus, equipment, or apparatus or equipment within any building.

(13) In this article “plans” means reasonable and appropriate documents demonstrating conclusion of the undertaker’s assessment that it is necessary or expedient to carry out the remedial works and that the remedial works proposed by the undertaker will be sufficient to fulfil their purpose.

(14) The undertaker may enter into an agreement or agreements in respect of remedial works with any owner or occupier (with the requisite consent of the owner) of a building to which this article applies or of any other building likely to be affected by the authorised project and such agreement shall have the effect (as between those parties only) of regulating the powers in this article, insofar as they incorporate, add to, omit or modify the provisions of this article or any of them.

Authority to survey and investigate the land

22.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—

- (a) survey, monitor and or investigate the land;
- (b) without prejudice to the generality of (a), survey, monitor and or investigate the land and any buildings on that land for the purpose of investigating the potential effects of the authorised project on that land or buildings on that land or for enabling the construction, use and maintenance of the authorised project;
- (c) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and or subsoil and or to remove soil samples;
- (d) without prejudice to the generality of sub-paragraph (a), carry out ecological and or archaeological investigations or monitoring on such land; and

- (e) place on, leave on and remove from the land apparatus for use in connection with the survey, monitoring and or investigation of land, the making of trial holes, and or the carrying out of ecological and or archaeological investigations.
- (2) This article also applies where an owner or occupier has requested the undertaker to enter his land for one or more of the purposes set out in (1).
- (3) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land. Such notice must contain a statement which notifies the recipient of his right under paragraph (4) to make a referral to arbitration.
- (4) Where a notice is served under paragraph (3), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 14 days beginning with the day on which the notice was served, require any issue as to whether the building or land needs to be surveyed or investigated to be referred to arbitration under article 63 (*arbitration*).
- (5) Any person entering land under this article on behalf of the undertaker—
- (a) shall, if so required on entering the land, produce written evidence of their authority to do so; and
 - (b) may take with them such vehicles and equipment as are necessary to carry out the survey, investigation, monitoring, or to make the trial holes.
- (6) No trial holes shall be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority (such consent shall not be unreasonably withheld); or
 - (b) in a private street without the consent of the street authority (such consent shall not be unreasonably withheld); or
 - (c) in a building without the consent of the owner and occupier.
- (7) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (8) Unless the undertaker has taken temporary possession of the land pursuant to article 35 (temporary use of land for carrying out the authorised project), the undertaker shall (unless required by the owners of the land not to do so) remove all vehicles and equipment from and restore the land to the reasonable satisfaction of the owners as soon as reasonably practicable after completion of the survey, monitoring or investigation (as the case may be).
- (9) The undertaker may not exercise the powers under this article after completion of construction.

Removal of human remains

- 23.—**(1) In this article “the specified land” means any land within the Order limits.
- (2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it shall remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.
- (3) Before any such remains are removed from the specified land the undertaker shall give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—
- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium,

and that person shall, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by a county court, and the court may make an order specifying who shall remove the remains and as to the payment of the costs of the application.

(8) The undertaker shall pay the reasonable expenses both of responding to notices under this article and of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by a county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker shall remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves shall be re-interred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker shall comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation shall be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on a county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857(7) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.

(15) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(8) shall not apply to the authorised project.

(16) The undertaker may not exercise the powers under this article after completion of construction.

Cemex

24.—(1) The undertaker shall give not less than 2 months' written notice to the relevant planning authority, Cemex, and (if different) the landowner, prior to the commencement of development of Work No. 13b (ii) further to article 3 of this Order.

(2) If the undertaker has given notice under (1), then within 14 days of receipt by the relevant planning authority of that notice, it shall provide a counter notice in writing to the undertaker, providing details of—

- (a) any extant planning permission granted further to the 1990 Act, for the development set out at Schedule 1 to this Order as Work No. 13b (ii), or substantially the same development; and
- (b) the extent of discharge of the conditions attached to that planning permission.

(3) If following receipt of a notice under (2), the undertaker proposes to construct the development or substantially the same development as is set out in Schedule 1 to this Order as Work No. 13b (ii), then the undertaker shall, not less than 7 days prior to commencement of that development, give further notice in writing to the relevant planning authority confirming whether the development is being carried out further to this Order or further to the planning permission notified under (2), or both.

(4) If following the giving of notice under paragraph (3) the undertaker proposes to commence or continue the development to which the notice relates further to any authorisation not relied upon in that notice, the undertaker shall give further notice in writing to that effect to the relevant planning authority not less than 7 days prior to commencement or continuation of the development further to that authorisation.

Felling or lopping of trees

25.—(1) Save in respect of trees or shrubs which come within article 26 (*trees subject to tree preservation orders*), or article 27 (*trees in conservation areas*) the undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(7) [1857 c.81](#). There are amendments to this Act which are not relevant to this Order.

(8) [S.I. 1950/792](#)

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(4) The undertaker may not exercise the powers under this article after completion of construction.

Trees subject to tree preservation orders

26.—(1) The undertaker may fell or lop or cut back the roots of any tree or shrub which is subject to a tree preservation order with the prior approval of the relevant planning authority, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(5) The undertaker may not exercise the powers under this article after completion of construction.

Trees in conservation areas

27.—(1) Save in respect of trees or shrubs which come within article 26 (*trees subject to tree preservation orders*), the undertaker may fell or lop any tree or shrub which is situated within a conservation area (designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990), or cut back its roots if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) Save for those trees identified on the approved plans, action may not be taken under paragraph (1) unless the undertaker has given written notice to the relevant planning authority of the intended action (with sufficient particulars to identify the tree), and either—

(a) the relevant planning authority has indicated in writing that it has no objection to the works or that they fall within an exemption in paragraph (3) or (4), or

(b) six weeks have elapsed from the date of the notice and a tree preservation order has not been made in respect of the tree or shrub.

(3) Paragraph (2) shall not apply where consent would not be needed for the proposed action if the tree or shrub were subject to a tree preservation order.

(4) Paragraph (2) shall not apply to any action which would be exempt in accordance with regulations under section 212 of the 1990 Act (disapplication of tree preservation offences).

(5) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 213(1) of the 1990 Act (replacement of trees) shall not apply.

(6) The authority given by paragraph (1) shall constitute an authorisation by an order granting development consent for the purposes of section 211(1A) of the 1990 Act.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(7) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(8) The undertaker may not exercise the powers under this article after completion of construction.