
STATUTORY INSTRUMENTS

2014 No. 2384

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

PART 4

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

49.—(1) Unless otherwise agreed by the undertaker, this article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project, or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Deemed marine licence

50. The undertaker is granted a deemed marine licence under Part 4 (marine licensing) of the Marine and Coastal Access Act 2009⁽¹⁾ to carry out the activities specified in Part 1 of Schedule 15 (*deemed marine licence*), subject to the licence conditions set out in Part 2 of that Schedule 15.

Miscellaneous provisions relating to the 1990 Act

51.—(1) Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (*cases in which land is to be treated as not being operational land for the purposes of that Act*).

(1) 2009 c.23; there are amendments that are not relevant to this Order.

(2) In the exercise of the power under article 10(2) (*street works*) the undertaker shall be deemed to be the highway authority for the purposes of section 55(2)(b) of the 1990 Act.

Safeguarding

52.—(1) Save in respect of exempt applications, before granting planning permission for development to which this article applies, a relevant planning authority must consult the undertaker.

(2) This article applies to development which—

(a) prior to completion of construction, would be wholly or partly either—

(i) in respect of the locations of proposed tunnels which will form part of the authorised project, within the construction phase safeguarding zone and at a depth of 10 or more metres below existing ground level; and or

(ii) in respect of all other parts of the authorised project, within the construction phase safeguarding zone;

(b) after completion of construction, would be either—

(i) wholly or partly within 6 metres of any tunnel forming part of the authorised project (measured from the inside face of the tunnel on the horizontal and vertical axes through the centre point of the tunnel such that the area subject to this provision is the area falling within the square defined by those horizontal and vertical parameters); or

(ii) wholly or partly within 10 metres (measured horizontally) of the outside structural surface of any shaft or other underground structure forming part of the authorised project but not falling within (b)(i); or

(iii) in all other cases, in the reasonable opinion of the relevant planning authority, having regard to the guidelines provided by the undertaker further to paragraph (3) below, likely to adversely affect the authorised project or its operational integrity.

(3) Paragraph 2(b) is conditional upon the undertaker providing to the relevant planning authority—

(a) notice of completion of construction pursuant to requirement PW16;

(b) ‘as built’ drawings of the tunnels and other below ground structures forming part of the authorised project within the relevant planning authority’s area; and

(c) a set of guidelines to which the relevant planning authority can have regard in the discharge of its obligation under paragraph 2(b)(iii).

(4) In the event that the relevant planning authority, in discharging its duty under paragraph (2)(b)(iii) of this article and having had regard to the guidelines issued under paragraph 3(c), is uncertain as to the reasonable likelihood of adverse effects on the authorised project or its operational integrity, then the relevant planning authority shall be under a duty to comply with paragraph (5) as if the development for which planning permission has been applied for falls within paragraph (2)(b).

(5) Where this article requires a relevant planning authority to consult the undertaker before granting planning permission—

(a) they must give the undertaker notice of the application for planning permission (unless the applicant has served a copy of the application on the undertaker), and

(b) they may not determine the application before the end of the period of 21 days, beginning two working days after the relevant planning authority has sent the notice to the undertaker by first class post or by such other means of service which may be agreed with the relevant planning authority, which will be deemed to be the date on which the undertaker receives the notice or copy of the application.

(6) But a relevant planning authority may determine an application during that period if the undertaker has—

- (a) made representations to the relevant planning authority about the application, or
- (b) notified the relevant planning authority that it does not intend to make representations.

(7) In determining an application for planning permission a relevant planning authority must take into account any representations received in accordance with this article.

(8) The requirement to consult under this article shall be a local land charge.

(9) In this article—

“construction phase safeguarding zone” means the area of land comprising the Order limits;

“exempt applications” means an application for planning permission which relates to development that— (i) consists of an alteration to an existing building, or the change of use of an existing building or land; and (ii) does not involve, or is not likely to involve any construction engineering or other operations below existing ground level; and (iii) is demonstrated by the party applying for such planning permission to the reasonable satisfaction of the relevant planning authority, as not being likely to breach the guidelines referred to at paragraph 3(c) of this article;

“relevant planning authority” means, for the purposes of this article, the planning authority in receipt of an application for planning permission to which this article applies; and

“operation” includes the testing and commissioning of the proposed development.

Provisions for protection of specified undertakers

53. Schedule 16 (provisions for protection of specified undertakers) to this Order has effect.

Discharge of requirements etc.

54.—(1) Save as provided otherwise by this Order, paragraph 4 of schedule 17 (*procedure for discharge of requirements etc. and appeals*) shall have effect in relation to all consents, agreements, approvals or notices granted, refused or withheld in relation to—

- (a) the requirements set out in Schedule 3 (*requirements*);
- (b) any document referred to in any requirement set out in Schedule 3 (*requirements*); and
- (c) the functions of the local authority set out in Sections 60 and or 61 of the Control of Pollution Act 1974.

(2) Save as provided otherwise by this Order, paragraphs 1, 2 and 3 of schedule 17 (*procedure for discharge of requirements etc. and appeals*) shall have effect in relation to applications made pursuant to the requirements set out in Schedule 3 (*requirements*).

(3) Save for applications made pursuant to paragraph 1 of Schedule 17 (*procedure for discharge of requirements etc. and appeals*), if, within 28 days (unless another period is provided for by this Order) after the application or request required or contemplated by any of the provisions of the Order has been submitted to the authority or owner, it has not notified the undertaker of its disapproval and the grounds of disapproval, it shall (unless the parties have agreed otherwise) be deemed to have refused the application or request and save as otherwise provided for by this order the applicant in each case may appeal further to paragraph 4 of Schedule 17.

(4) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain, for any consent, agreement, approval or notice required or contemplated by any of the provisions of the Order such consent, agreement or approval shall, if given, be given in writing and shall not be unreasonably withheld.

Removal of consent requirements

55. Schedule 18 (*removal of consent requirements*) to this Order, which makes provision for the removal of consent requirements under Section 150 of the 2008 Act in relation to the provisions of this Order and otherwise for the purposes of this Order, shall have effect.

Application, disapplication and modification of legislative provisions

56. Part 1 of Schedule 19 (*miscellaneous controls*) to this Order, which makes provision applying, modifying and excluding statutory provisions which relate to matters for which provision may be made by this Order, has effect.

Amendment of local legislation

57.—(1) Subject to any other provisions of this Order, the local enactments specified in Part 2 of Schedule 19 (*miscellaneous controls*), and any byelaws or other provisions made under any of those enactments, are hereby excluded and do not apply insofar as inconsistent with a provision of, or the exercise of a power conferred by, this Order.

(2) The effect of paragraph (1) is to ensure, in particular, that a power conferred by this Order may be exercised despite, and without having regard to, a provision made by or by virtue of a specified enactment, that—

- (a) requires or permits a specified road, path, passage, bridge, parapet, fence or other place or structure to be kept open or maintained generally or in a specified manner,
- (b) requires or permits the provision and maintenance of lights or other apparatus or structures generally or in a specified manner,
- (c) prohibits or restricts (or imposes conditions or penalties on or in relation to) the obstruction or removal of, or the causing of damage to, a specified place or structure (or class of places or structures),
- (d) prohibits or restricts (or imposes conditions on or in relation to) the erection of structures, or the undertaking of other works, in a specified place or structure (or class of places or structures),
- (e) permits or requires a specified place or structure to be closed,
- (f) makes provision about the conduct of persons using a specified walkway or other place or structure (or class of places or structures) whether by prohibiting or restricting movement (of persons, vehicles or animals) or otherwise,
- (g) specifies a minimum or maximum depth for, or otherwise restricts or imposes conditions in relation to, the laying of pipes or the carrying out of any other works,
- (h) prohibits the laying of pipes or the carrying out of any other works generally or without the consent of a specified person,
- (i) makes provision about the construction or maintenance of, or any other matter relating to, pipes, drains or other means of connecting with sewers,
- (j) prohibits or restricts interference with the banks or bed of, or traffic on, the River Thames, or
- (k) in any other way would or might apply in relation to anything done, or omitted to be done, in the exercise of a power conferred by this Order.

(3) For the purposes of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;

- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken;
 - (c) action taken in pursuance of a power or duty under the provision would or might interfere with the exercise of any work authorised by this Order.
- (4) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker under or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out-
- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application,
 - (b) whether, in the event of a contravention of the provision of local application, the undertaker believes that the provision is excluded by this article and the grounds (if any) for that belief, and
 - (c) the extent of that exclusion.
- (5) Where any person receives a response from the undertaker pursuant to paragraph (4), they shall as soon as reasonably practicable, and at any rate within 14 days of receipt of the undertaker's response, respond in writing setting out -
- (a) whether any part of the undertaker's response is in dispute, and if so which part(s), and
 - (b) the grounds for disputing the undertaker's response.
- (6) The City of London (Various Powers) Act 1967 is excluded by paragraph (1) above-
- (a) generally, until the completion of construction, and
 - (b) after the completion of construction, only in respect of section 11A(3).

Application of pipe subways legislation

58.—(1) Where in the course of the construction or maintenance of the authorised project any part of public service works vested in the Mayor and Commonalty and Citizens of the City of London in accordance with Part V of the City of London (Various Powers) Act 1900⁽²⁾ (“the 1900 Act”) is removed, disassembled or damaged and later reinstated, Part V of the 1900 Act (as amended) shall apply to the reinstated part of the works as if it had been constructed by the said Mayor and Commonalty and Citizens in accordance with that Part of that Act

(2) Where in the course of the construction or maintenance of the authorised project any part of a subway belonging to the Mayor and Commonalty and Citizens of the City of London or to the Lord Mayor and Citizens of the City of Westminster and to which the London County Council (Subways) Act 1893⁽³⁾ (“the 1893 Act”) applies is removed, disassembled or damaged and later reinstated, the reinstated part of the subway shall vest in the said Mayor and Commonalty and Citizens of the City of London or in the Lord Mayor and Citizens of the City of Westminster as the case may be and the 1893 Act (as amended) shall apply to the reinstated part of the subway as if it had existed at the passing of that Act.

(3) Where in the course of the construction or maintenance of the authorised project any new pipe subway is constructed in the City of London or in the City of Westminster (not being a reinstatement of part of a subway removed, disassembled or damaged in the course of the authorised project), Part V of the 1900 Act (as amended) shall apply to the subway (if it is within the City of London) as if it was public service works constructed by the Mayor and Commonalty and Citizens of the City of

(2) 1900 c. ccxxviii

(3) 1893 c. ccii.

London in accordance with that Part of that Act and the 1893 Act (as amended) shall apply to the pipe subway (if it is within the City of Westminster) as if it had existed at the passing of the Act.

(4) For the purposes of paragraph (2), “pipe subway” means any culvert, tube, receptacle or gallery under the surface of a street with the necessary approaches thereto adapted for the proper reception of pipes and wires placed therein; and for the purposes of this paragraph, “pipe” means any pipe, main, valve, tube, or channel, and “wire” means any wire, conductor or cable and any attachment thereto or any covering or protection thereof.

(5) Part V of the 1900 Act or (as the case may be) the 1893 Act shall not cease to apply to any public service works or (as the case may be) subway to which either Act applies prior to the commencement of the authorised project, and shall not fail to apply to any reinstatement or replacement thereof in the course of the authorised project, by virtue of the fact that land counted as a “street” for the purpose of either Act ceases so to be counted as a result of the exercise of a power conferred by this Order.

Other legislation in the City of London

59. If and to the extent that the relocated stairs specified in Work No. 17b(viii) in Part of Schedule 1 to this Order or the replacement stairs and lift specified in Work No. 17b(ix) (“the replacement structures”) become vested in the Mayor and Commonalty and Citizens of the City of London in their capacity as trustees of the Bridge House Estates, section 16 of the Blackfriars Bridge Act 1863(4) (new Bridge deemed to be vested in the City of London as Trustees of the Bridge House Estates) shall have effect as if a reference to the new Bridge included a reference to the replacement structures (in so far as so vested).

Unilateral undertaking – Project-wide matters

60. The authorised development shall not commence unless and until the undertaker enters into the Unilateral undertaking for securing offsite mitigation and compensation policy and resources for local planning authorities (in accordance with document reference APP209.03).

Certification of plans etc

61.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the land plans;
- (b) the access plans;
- (c) the works plans and sections;
- (d) the approved plans;
- (e) the book of reference; and
- (f) the environmental statement,

for certification that they are true copies of the plans or documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Meaning of Secretary of State

62. For the purposes of the provisions of this Order the Secretary of State shall mean the Secretary of State for Communities and Local Government and the Secretary of State for Environment, Food

(4) 1863 c. 59.

and Rural Affairs, save that for the purposes of the following articles it shall mean the Secretary of State stated (or their successor)—

- (a) Article 9 (*transfer of benefit of Order*) - the Secretary of State for Environment, Food and Rural Affairs;
- (b) Article 23 (*removal of human remains*) - the Secretary of State for Justice;
- (c) Article 47 (*public rights of navigation*) - the Secretary of State for Transport; and
- (d) Schedule 17, paragraph 4 (*procedure for discharge of requirements etc. and appeals*) - the Secretary of State for Communities and Local Government.

Arbitration

63. Any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) shall, unless otherwise provided for in this Order and unless otherwise agreed between the parties, be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by—

- (a) in the case of matter pertaining to land and surveying of such land, the President of the Royal Institute of Chartered Surveyors;
- (b) in the case of matters pertaining to archaeology, the President of the Institute of Field Archaeologists;
- (c) in the case of matters of legal interpretation, the President of the Law Society;
- (d) in the case of all other matters, the President of the Institution of Civil Engineers.