
STATUTORY INSTRUMENTS

2015 No. 1832

The Ferrybridge Multifuel 2 Power Station Order 2015

PART 3

SUPPLEMENTARY POWERS

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of the streets specified in Schedule 5 (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;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) execute any works required for or incidental to any works referred to in subparagraphs (a), (b), (c), and (d).

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

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

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

Access to works

10. The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in Schedule 6 (access to works); and
- (b) with the approval of the 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 development.

Agreements with street authorities

11.—(1) A street authority and the undertaker may enter into an agreement with respect to the carrying out of any of the works referred to in article 9(1) (street works).

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

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

- (b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works;
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Discharge of water

12.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development 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) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(1) (right to communicate with public sewers).

(3) The undertaker may 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 may not be unreasonably withheld.

(4) The undertaker may 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, but such approval may not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) The undertaker must 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 a water discharge activity prohibited by regulation 12 of the 2010 Regulations.

(8) In this article—

“public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(2), an internal drainage board, a joint planning board, a local authority, a National Park authority, a sewerage undertaker or an urban development corporation;

“water discharge activity” has the same meaning as in the 2010 Regulations;

other expressions, excluding “watercourse”, used both in this article and in the Water Resources Act 1991(3) have the same meanings as in that Act.

Authority to survey and investigate the land

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

- (a) survey or investigate the land;
- (b) without prejudice to the generality of subparagraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(1) 1991 c. 56.

(2) 1964 c. 40.

(3) 1991 c. 57.

- (c) without prejudice to the generality of subparagraph (a), carry out ecological or archaeological investigations on such land;
 - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) 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.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required when entering the land, produce written evidence of his or her authority to do so;
 - (b) may take with him or her such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes may be made under this article—
- (a) in land located within the highway boundary, without the consent of the highway authority;
 - (b) in a private street, without the consent of the street authority.
- (5) A consent for the purpose of paragraph (4)(a) or (b) may be given subject to such terms and conditions as the authority giving it may reasonably impose, but may not be unreasonably withheld.
- (6) The undertaker must compensate any owner or occupier of land who sustains loss or damage by reason of the exercise of the authority conferred by this article for that loss or damage.
- (7) Any compensation payable under paragraph (6) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Felling or lopping of trees

- 14.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes that it is necessary to do so to prevent the tree or shrub—
- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;
 - (b) from constituting a danger to persons using the authorised development.
- (2) In carrying out any activity authorised by paragraph (1) the undertaker may not cause unnecessary damage to a tree or shrub.
- (3) The undertaker must compensate any person who sustains loss or damage by reason of the exercise of the authority conferred by this article for that loss or damage.
- (4) Any dispute as to a person's entitlement to compensation under paragraph (3), or any dispute as to the amount of compensation, is to be determined under Part 1(determination of questions of disputed compensation) of the 1961 Act.

Rights under or over streets

- 15.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.
- (2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) a subway or underground building;
- (b) a cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (6), the undertaker must compensate any owner or occupier of land appropriated under paragraph (1) who sustains loss by reason of that appropriation for that loss.

(5) Any compensation payable under paragraph (4) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(6) Compensation is not payable under paragraph (4) to a person who is an undertaker to which section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Statutory undertakers

16.—(1) The undertaker may extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers shown on the Order plan and described in the book of reference.

(2) In paragraph (1), “the Order plan” and “the book of reference” mean the documents respectively certified as such by the Secretary of State for the purposes of this Order under article 23.

Recovery of costs of new connections

17.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 16 (statutory undertakers), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer, but where such a sewer is removed under article 16 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer, or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article has no effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(4);

“public utility undertaker” has the same meaning as in the 1980 Act.