
STATUTORY INSTRUMENTS

2016 No. 987

The Brechfa Forest Wind Farm Connection Order 2016

PART 3

Streets

Application of the New Roads and Street Works Act 1991

8.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if they are of a description mentioned in paragraphs (f) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made, or code of practice issued or approved, under those provisions are to apply (with the necessary modifications) in relation to any closure, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 12 (temporary closure of streets and public rights of way) and the carrying out of street works under article 10 (street works) whether or not the works, closure, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are —

- (a) section 54 (advance notice of certain works), subject to paragraph (4);
- (b) section 55 (notice of starting date of works), subject to paragraph (4);
- (c) section 56 (directions as to timing of street works);
- (d) section 57 (notice of emergency works);
- (e) section 59 (general duty of street authority to co-ordinate works);
- (f) section 60 (general duty of undertakers to co-operate);
- (g) section 65 (safety measures);
- (h) section 67 (qualifications of supervisors and operatives);
- (i) section 68 (facilities to be afforded to street authority);
- (j) section 69 (works likely to affect other apparatus in the street);
- (k) section 70 (duty of undertaking to reinstate);
- (l) section 71 (materials, workmanship and standard of reinstatement);
- (m) section 72 (powers of street authority in relation to reinstatement);
- (n) section 73 (reinstatement affected by subsequent works);
- (o) section 75 (inspection fees);
- (p) section 76 (liability for cost of temporary traffic regulation);
- (q) section 77 (liability for cost of use of alternative route); and
- (r) all such other provisions as apply for the purposes of the provisions mentioned above.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) are to have effect as if references in section 57 of that Act to emergency works were a reference to a closure, alteration or diversion (as the case may be) required in a case of emergency.

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter upon so much of any of the streets specified in Schedule 6 (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 or over the street;
- (d) maintain apparatus in or over the street or change its position;
- (e) place and keep during the construction and installation of the authorised development scaffolding above the street or on any verge to a street;
- (f) strengthen, improve, repair or reconstruct any street;
- (g) remove or use all earth and materials in or under any street; and
- (h) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d), (e), (f) and (g).

(2) The authority given by paragraph (1) 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.

(3) The powers conferred in paragraphs (1) and (2) are without prejudice to the powers of the undertaker under the 1989 Act.

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

Construction and maintenance of new or altered means of access

10.—(1) Those parts of each means of access specified in Schedule 5 (parts of access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the relevant highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the relevant highway authority.

(2) Those parts of each means of access specified in Schedule 5 (parts of access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the relevant street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from the date on which the undertaker no longer requires use of the access for the construction of the authorised development and from the expiry of that period by and at the expense of the relevant street authority.

(3) 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 is 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.

(4) For the purposes of a defence under paragraph (3), a court is, in particular, to have regard to the following matters—

- (a) the character of the street including 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 that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Temporary closure of streets and public rights of way

11.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter or divert any street or public right of way and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to paragraph (1), the undertaker may use any street or public right of way closed under the powers conferred by this article within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary closure, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, alter or divert the streets and public rights of way specified in column (2) of Schedule 7 (streets/ rights of way to be temporarily closed, altered or diverted) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans, in column (4) of that Schedule.

(5) The undertaker must not temporarily close, alter or divert—

- (a) any street or public right of way specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld.

(6) If a street authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (5)(b) that street authority is to be deemed to have granted consent.

Traffic regulation

12.—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to when the authorised development first becomes operational—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
 - (b) authorise the use as a parking place of any road; and
 - (c) make provision as to the direction or priority of vehicular traffic on any road either at all times or at times, on days or during such periods as may be specified by the undertaker.
- (2) The undertaker must not exercise the powers of article 12 in respect of prohibitions or restrictions relating to vehicular traffic only and paragraph (1) of this article unless it has—
- (a) given not less than 4 weeks' notice in writing of its intention to do so 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 its receipt of notice of the undertaker's intention in the case of subparagraph (a).
- (3) Any prohibition, restriction or other provision made by the undertaker under article 13 or paragraph (1) of this article—
- (a) has 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,
 - (b) and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004⁽¹⁾ (road traffic contraventions subject to civil enforcement).
- (4) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (5) If the traffic authority fails to notify the undertaker of its decision within 56 days of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

Access to works

13.—(1) The undertaker may, for the purposes of carrying out, construction or maintenance of the authorised development and with the consent of the relevant planning authority, after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If the relevant planning authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision within 42 days of receiving an application, the planning authority is to be deemed to have granted approval.

Agreements with street authorities

- 14.**—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (b) any temporary closure, alteration or diversion of a street authorised by this Order; or
 - (c) the carrying out in the street of any of the works referred to in article 9 (street works) or article 13 (access to works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—

(1) 2004 c.18

- (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; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.