
STATUTORY INSTRUMENTS

2021 No. 1259

The South Humber Bank Energy Centre Order 2021

PART 6

MISCELLANEOUS AND GENERAL

Protective provisions

18. Schedule 8 (protective provisions) has effect.

Commencement Information

I1 Art. 18 in force at 2.12.2021, see [art. 1](#)

Statutory undertakers

19. Subject to the provisions of Schedule 8 (protective provisions), the undertaker may reposition the apparatus belonging to statutory undertakers.

Commencement Information

I2 Art. 19 in force at 2.12.2021, see [art. 1](#)

Apparatus and rights of statutory undertakers in stopped up streets

20. Where a street is temporarily altered or diverted or its use is temporarily stopped up under article [12](#) (construction and maintenance of new or altered means of access) or article [13](#) (temporary stopping up of streets and public rights of way) any statutory utility whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 8 (protective provisions), as if this Order had not been made.

Commencement Information

I3 Art. 20 in force at 2.12.2021, see [art. 1](#)

Recovery of costs of new connections

21.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 20 (apparatus and rights of statutory undertakers in stopped up streets) 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 20 (apparatus and rights of statutory undertakers in stopped up streets), 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 does not have effect in relation to apparatus to which article 20 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act (street works in England and Wales) applies.

(4) In this article—

- (a) “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(1) (interpretation of chapter 1); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

Commencement Information

I4 Art. 21 in force at 2.12.2021, see [art. 1](#)

Application of landlord and tenant law

22.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development 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 development, 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 prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies 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.

(1) [2003 c. 21](#). There are amendments to this section that are not relevant to this Order.

Commencement Information

I5 Art. 22 in force at 2.12.2021, see [art. 1](#)

Operational land for purposes of the 1990 Act

23. Development consent granted by this Order is to 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).

Commencement Information

I6 Art. 23 in force at 2.12.2021, see [art. 1](#)

Defence to proceedings in respect of statutory nuisance

24.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisances)(2) in relation to a nuisance falling within section 79(1)(g) of that Act (statutory nuisances and inspections therefor) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the construction of the authorised development 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(3); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development 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), does 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 development.

Commencement Information

I7 Art. 24 in force at 2.12.2021, see [art. 1](#)

(2) [1990 c. 43](#). Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 ([c. 16](#)); section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

(3) [1974 c. 40](#). Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 ([c. 25](#)). There are other amendments to the Control of Pollution Act 1974 which are not relevant to this Order.

Certification of plans, etc.

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

- (a) the access and rights of way plan;
- (b) the book of reference;
- (c) the environmental statement;
- (d) the land plans;
- (e) the works plans;
- (f) the indicative lighting strategy;
- (g) the biodiversity strategy;
- (h) the framework construction traffic management plan;
- (i) the swept path analysis plan; and
- (j) the indicative landscape strategy;

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

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

Commencement Information

18 Art. 25 in force at 2.12.2021, see [art. 1](#)

Service of notices

26.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978 (references to service by post)(4) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(4) 1978 c. 30.

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
 - (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—
- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
 - (b) the notice or document is capable of being accessed by the recipient;
 - (c) the notice or document is legible in all material respects; and
 - (d) in a form sufficiently permanent to be used for subsequent reference.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.

Commencement Information

I9 Art. 26 in force at 2.12.2021, see [art. 1](#)

Procedure in relation to certain approvals, etc.

27.—(1) Where an application is made to, or a 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 or approval required or contemplated by any of the provisions of the Order, not including the requirements, such consent, agreement or approval must be given in writing and must not be unreasonably withheld or delayed.

(2) Save for applications made in relation to requirements, if, within eight weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed in writing with the undertaker) it has not notified the undertaker of its decision (and if it is a disapproval the grounds of disapproval), it is deemed to have approved the application or request.

Commencement Information

I10 Art. 27 in force at 2.12.2021, see [art. 1](#)

Requirements, appeals etc.

28.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement the undertaker may appeal, in the event that—

- (a) the relevant planning authority refuses that consent, agreement or approval or grants it subject to conditions;
- (b) the relevant planning authority does not give notice of its decision to the undertaker within [^{F1}eight weeks after the application has been made to the relevant planning authority or such other period that has been agreed by the undertaker and the relevant planning authority;]
- (c) on receipt of a request for any further information, the undertaker considers that either the whole or part of the specific information requested by the relevant authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal (together with the undertaker, these are the “appeal parties”);
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person (“the appointed person”) to determine the appeal and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for their attention should be sent, the date of such notification being the “start date” for the purposes of this paragraph (2);
- (c) the relevant planning authority and any consultee required to be consulted pursuant to the requirement which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within ten working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within ten working days of receipt of written representations pursuant to sub-paragraph (c); and
- (e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

(3) The appointment of the person pursuant to paragraph (2)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to consider the appeal, the appointed person must notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must make any notification and set the date for the receipt of such further information having regard to the timescales in paragraph (2).

(5) Any further information required under paragraph (4) must be provided by [^{F2}the appeal party from whom the further information was requested to the appointed person and the other appeal parties] on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed

person within ten working days of the specified date but otherwise is to be in accordance with the process and time limits set out in paragraphs (2)(c) to (2)(e).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not).

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case and may deal with the application as if it had been made to the appointed person in the first instance.

(9) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this article, it is to be deemed to be an approval for the purpose of Schedule 2 as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to paragraph (12) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Textual Amendments

- F1** Words in [art. 28\(1\)\(b\)](#) substituted (5.4.2022) by [The South Humber Bank Energy Centre \(Correction\) Order 2022 \(S.I. 2022/421\)](#), [art. 1\(2\)](#), [Sch.](#)
- F2** Words in [art. 28\(5\)](#) substituted (5.4.2022) by [The South Humber Bank Energy Centre \(Correction\) Order 2022 \(S.I. 2022/421\)](#), [art. 1\(2\)](#), [Sch.](#)

Commencement Information

- I11** Art. 28 in force at 2.12.2021, see [art. 1](#)

Arbitration

29.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to 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 the Secretary of State.

(2) This article does not apply where any difference under any provision of this Order is between any person and the Secretary of State.

Changes to legislation: There are currently no known outstanding effects for the The South
Humber Bank Energy Centre Order 2021, PART 6. (See end of Document for details)

Commencement Information

I12 Art. 29 in force at 2.12.2021, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The South Humber Bank Energy Centre Order 2021, PART 6.