
STATUTORY INSTRUMENTS

2024 No. 436

The HyNet Carbon Dioxide Pipeline Order 2024

PART 4

Supplemental powers

Discharge of water

20.—(1) Subject to paragraphs (3) and (4) 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 inspect, 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 by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(1).

(3) The undertaker must 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 must not be unreasonably withheld or delayed.

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to paragraph (1) except—

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

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works within any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of the Environment Agency or Natural Resources Wales as appropriate.

(6) The undertaker must, unless otherwise authorised under the provisions of this Order or any environmental permit relating to the discharge of water in connection with the authorised development, 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 12 (requirement for environmental permit) of the 2016 Regulations.

(8) In this article—

(1) 1991 c. 56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c. 37) and section 32, Schedule 3, paragraph 16(1) of the Flood and Water Management Act 2010 c. 29.

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, Natural Resources Wales, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the 2016 Regulations have the same meaning as in those Regulations.

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 42 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

Maintenance of drainage works

21.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(2).

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 development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes or pits 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;
- (c) without prejudice to the generality of sub-paragraph (a), carry out environmental, utility or archaeological investigations on such land; and
- (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) The power conferred by sub-paragraph (1)(c) includes without prejudice to the generality of that sub-paragraph the power to take, and process, samples of or from any of the following found on, in or over the land—

- (a) water;
- (b) air;
- (c) soil or rock;
- (d) its flora;
- (e) bodily excretions, or dead bodies, of non-human creatures; or
- (f) any non-living thing present as a result of human action.

(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.

(4) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required before or after 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 or investigation or to make the trial holes or pits.
- (5) No trial holes or pits are to be made under this article—
 - (a) in land located within the highway boundary without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority, which authority may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld or delayed.
- (6) As soon as reasonably practicable following the completion of any activities carried out under paragraph (1), the undertaker must remove any apparatus and restore the land to the reasonable satisfaction of the owners of the land.
- (7) The undertaker must 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, as if it were a dispute under Part 1 (determination of question of disputed compensation) of the 1961 Act.
- (8) If either a highway authority or a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision within 42 days of receiving the application for consent, that authority is deemed to have granted consent.
- (9) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Protective work to buildings

- 23.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.
- (2) Protective works may be carried out—
 - (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
 - (b) after the completion of that part of the authorised development in the vicinity of the 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 development first becomes operational.
 - (3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage, and place on, leave on and remove from the building any apparatus and equipment for use in connected with the survey.
 - (4) For the purpose of carrying out protective works to a building under this article, the undertaker may (subject to paragraphs (5) and (6))—
 - (a) enter the building and any land within its curtilage; and
 - (b) where the works cannot be carried out reasonably conveniently without entering land that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).
 - (5) Before exercising—
 - (a) a power under paragraph (1) to carry out protective works to a building;
 - (b) a power under paragraph (3) to enter a building and land within its curtilage;

- (c) a power under sub-paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power under sub-paragraph (4)(b) to enter land,

the undertaker must, 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 the power and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether 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 47 (arbitration).

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

(8) 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 part of the authorised development carried out in the vicinity of the building first becomes operational 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 development,

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) Section 1 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies in respect of the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the carrying out, maintenance or use of the authorised development.