
STATUTORY INSTRUMENTS

2021 No. 1414

The Norfolk Boreas Offshore Wind Farm Order 2021

PART 4

Supplemental Powers

Discharge of water and works to watercourses

15.—(1) Subject to paragraphs (3) and (4) below 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 project 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 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 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.

(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 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.

(6) Nothing in this article overrides the requirement for an environmental permit under Regulation 12(1)(b) of the 2016 Regulations insofar as the discharge activity comes within the definition contained within the 2016 Regulations.

(7) Subject to paragraph (8) below, the undertaker may in connection with the carrying out or maintenance of the authorised project, alter the bed or banks of, and construct works in, under, over or within any watercourse and may divert, alter, interrupt or obstruct the flow of any watercourse within the Order limits.

(8) The undertaker must not:

- (a) undertake any works within 8 metres of, any watercourse forming part of a river, or within 16 metres of a tidally influenced main river without the consent of the Environment

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

Agency, which must not be unreasonably withheld but may be subject to reasonable conditions; and

- (b) undertake any works to any ordinary watercourse without the consent of the relevant drainage authorities or Norfolk County Council as the case may be, which must not be unreasonably withheld but may be subject to reasonable conditions.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, a relevant drainage authority or a local authority;
- (b) “ordinary watercourse” has the meaning given in the Land Drainage Act 1991;
- (c) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(10) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3), approval under paragraph 4(a) or consent under paragraph (8) that person is deemed to have granted consent or given approval, as the case may be.

Commencement Information

II Art. 15 in force at 1.1.2022, see [art. 1](#)

Authority to survey and investigate the land onshore

16.—(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 project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (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;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological 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) 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) The notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.

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

- (a) must, if so required on 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.

(5) No trial holes may be made under this article—

- (a) in land forming a railway without the consent of Network Rail Infrastructure Limited; or
- (b) in land held by or in right of the Crown without the consent of the Crown.

(6) No trial holes may 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,

but such consent must not be unreasonably withheld.

(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, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (5)(a) in the case of a highway authority; or

(b) under paragraph (5)(b) in the case of a street authority;

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 entry onto, or possession of land under 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.

Commencement Information

I2 Art. 16 in force at 1.1.2022, see [art. 1](#)

Removal of human remains

17.—(1) In this article, “the specified land” means the land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land, it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land, the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the authorised project; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3), the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857⁽²⁾ (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

Commencement Information

I3 Art. 17 in force at 1.1.2022, see [art. 1](#)

Changes to legislation: *There are currently no known outstanding effects for the The Norfolk Boreas Offshore Wind Farm Order 2021, PART 4. (See end of Document for details)*

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