
STATUTORY INSTRUMENTS

2024 No. 393

The National Grid (Yorkshire Green Energy
Enablement Project) Development Consent Order 2024

PART 4

SUPPLEMENTAL POWERS

Discharge of water

19.—(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 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 under paragraph (1) is to be 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 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 must not be unreasonably withheld or delayed; 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 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 under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for an environmental permit) of the 2016 Regulations.

(8) This article does not permit any activity listed in paragraph 3(1) of Schedule 21 (water discharge activities) to the 2016 Regulations.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation)

⁽¹⁾ 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and section 49 of, and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

of the Harbours Act 1964 (2), an internal drainage board, a joint planning board, a local authority, the highway authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

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

(10) Any application for consent under paragraph (3) or approval under paragraph (4)(a) must include a statement that the provisions of paragraph (9) apply to that application.

(11) In relation to any works executed under this Order, Section 66 of the Land Drainage Act 1991(4) is amended after paragraph (9) to insert—

“(10) Where an application is made to an internal drainage board for their consent under a byelaw made under this section—

- (a) the consent is not to be unreasonably withheld; and
 (b) if the internal drainage board fail within 28 days after receipt of the application to notify the applicant in writing of their determination, the internal drainage board are deemed to have consented to the application.

(11) No consent is required under any byelaw made by an internal drainage board under this section if it relates solely to the oversail of an overhead electric line which meets the minimum statutory clearances contained in Schedule 2 of the Electricity Safety, Quality and Continuity Regulations 2002(5) when measured from the top of the bank of any watercourse maintained by an internal drainage board.”

Protective work to land, buildings, structures, apparatus or equipment

20.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any land, building, structure, apparatus or equipment lying within the Order limits or which may be affected by the authorised development 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 land, building, structure, apparatus or equipment of any part of the authorised development; or
 (b) after the completion of that part of the authorised development in the vicinity of the land, building, structure, apparatus or equipment 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 is first brought into operational use.

(3) For the purpose of determining how the functions under this article are to be exercised, the undertaker may enter and survey—

- (a) any land, building, structure, apparatus or equipment, falling within paragraph (1) and any land within its curtilage; and
 (b) where reasonably necessary, any land which is adjacent to the land, building, structure, apparatus or equipment, whether or not within Order limits,

and place on, leave on and remove from the building, structure, apparatus or equipment any apparatus and equipment for use in connection with the survey.

(2) 1964 c. 40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 9(1) and (2), subject to transitional provisions specified in S.I. 1992/1347 article 3.

(3) 1991 c. 57.

(4) 1991 c. 23.

(5) SI:2002/2665. There are amendments to the Electricity Safety, Quality and Continuity Regulations 2002 which are not relevant to this section.

(4) For the purpose of carrying out protective works under this article to land, building, structure, apparatus or equipment the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the land, building, structure, apparatus or equipment and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which 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 right under paragraph (1) to carry out protective works to land, buildings, structures, apparatus or equipment;
- (b) a right under paragraph (2) to enter land, building, structure, apparatus or equipment and land within its curtilage;
- (c) a right under paragraph (3)(a) to enter any land, building, structure, apparatus or equipment and land within its curtilage; or
- (d) a right under paragraph (3)(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 that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the land, building, structure, apparatus, equipment or curtilage 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 whether it is necessary or expedient to carry out the protective works or to enter the land, building, structure, apparatus, equipment or curtilage land to be referred to arbitration under article 52 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to the land, building, structure, apparatus or equipment; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development constructed in the vicinity of the land, building, structure, apparatus or equipment is first brought into operational use it appears that the protective works are inadequate to protect the building against damage caused by the construction or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the land, building, structure, apparatus or equipment for any loss or damage sustained by them.

(9) Without affecting article 31 (no double recovery), nothing in this article relieves the undertaker from any liability to pay compensation under section 152(6) of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) Section 13(7) (refusal to give possession to acquiring authority) of the 1965 Act applies to entry onto, or possession of, land under this article to the same extent as it applies to the compulsory

(6) As amended by Schedule 1, paragraph 293 of [S.I. 2009/1307](#).

(7) As amended by sections 62(3) and 139(4) to (9) of, paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#).

acquisition of land under this Order by virtue of section 125(8) (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works” in relation to land, building, structure, apparatus or equipment means—

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

Authority to survey and investigate the land

21.—(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, monitor or investigate the land; (including any watercourses, groundwater, static water bodies or vegetation on the land);
- (b) without prejudice to the generality of sub-paragraph (a), survey, monitor or investigate the land and any buildings on that land for the purpose of investigating the potential effects of the authorised development on that land or buildings on that land or for enabling the construction, use and maintenance of the authorised development;
- (c) without limitation on the scope of sub-paragraph (a), make trial holes, boreholes, excavations or take horizontal cores in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil, groundwater and other materials below ground level or remove soil, rock, water or other material samples and discharge water from sampling operations on to the land;
- (d) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations and monitoring on the land, including making any excavations or trial holes on the land for such purposes; and
- (e) place on, leave on and remove from the land apparatus (including but not limited to welfare facilities and security facilities) for use in connection with the survey, monitoring or investigation of land, making of trial holes, boreholes, excavations, cores, or the carrying out of ecological or archaeological investigations or monitoring.

(2) The power conferred by paragraph (1) includes without prejudice to the generality of that 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) 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;
 - (b) must, before entering the land, provide in the notice details of the purpose specified in paragraph (1) to survey and investigate the land; and
 - (c) may take onto the land such vehicles and equipment as are necessary to carry out the survey, monitoring or investigation or to make the trial holes.
- (5) No trial holes, boreholes, excavations or horizontal cores may be made under this article—
- (a) on land located within the highway boundary without the consent of the relevant highway authority; or
 - (b) in a private street without the consent of the street authority;

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 powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(8) If a highway authority or 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 sub-paragraph (5)(a) in the case of a highway authority; or
- (b) under sub-paragraph (5)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(9) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 of the 2008 Act (application of compulsory acquisition provisions).

(10) Any application for consent under paragraph (5) must include a statement that the provisions of paragraph (8) apply to that application.