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STATUTORY INSTRUMENTS

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**2015 No. 1592**

**The Dogger Bank Teesside A and  
B Offshore Wind Farm Order 2015**

**PART 4**

**Supplemental powers**

**Discharge of water**

**18.**—(1) 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) must be 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 a 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 the person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into a 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; and

(b) where the 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 a 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 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 a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010(2).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain that belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker(3); and

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

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(1) 1991 c.56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section that are not relevant to this Order.

(2) S.I. 2010/675. “Groundwater activity” is defined in paragraph 3 of Schedule 22. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

(3) “Sewerage undertaker” is defined in Schedule 1 to the Interpretation Act 1978 (c.30).

(9) This article does not relieve the undertaker of any obligation to obtain a permit or licence from the Environment Agency or of any other obligation under any other legislation that may be required to authorise the making of a connection to, or the use of, a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (2).

### **Protective work to buildings**

**19.**—(1) Subject to the provisions of this article, the undertaker may at its own expense carry out such protective works to any building within the Order limits shown on the onshore order limits and grid co-ordinates plan 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 project; or
- (b) after the completion of that stage of the authorised project in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that stage of the authorised project is brought into commercial operation.

(3) For the purpose of determining how the functions 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.

(4) For the purpose of carrying out protective works under this article to a building 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 right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under 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 that right and, in a case falling within sub-paragraph (a) or (c), the notice must specify 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 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 building or land to be referred to arbitration under article 44 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or 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 a building; and
- (b) within 5 years beginning with the day on which the part of the authorised project carried out in the vicinity of the building is brought into commercial operation it appears that

the protective works are inadequate to protect the building against damage caused by the carrying out or use of that stage of the authorised project, 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 of any liability to pay compensation under section 10(2) of the 1965 Act (further provision as to compensation for injurious affection).

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

(11) 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 project; 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 project.

#### **Authority to survey and investigate land**

**20.**—(1) The undertaker may for the purposes of this Order enter on any land within the Order limits shown on the onshore order limits and grid co-ordinates plan or that may be affected by the authorised project and—

- (a) survey or investigate the land;
- (b) without limiting 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 limiting sub-paragraph (a), carry out ecological or archaeological investigations on the 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 the 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) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required entering the land, produce written evidence of the authority to do so; and
- (b) may take with him or her such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) 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.

(5) After completion of the activities being undertaken pursuant to this article, any apparatus must be removed as soon as practicable, and the land must be restored to its original condition.

(6) 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 (determination of questions of disputed compensation) of the 1961 Act.

(7) This article applies in relation to the onshore works only.

### **Removal of human remains**

**21.**—(1) In this article, “specified land” means the land within the limits shown on the onshore order limits and grid co-ordinates plan.

(2) Before the undertaker carries out any development or works that disturb or may disturb any human remains in the specified land, it must remove the 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 in 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, the person must 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 the 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 is given to the undertaker in respect of any remains in the specified land;
- (b) notice under paragraph (5) 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;
- (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 a notice under paragraph (5) 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 are to be re-interred in individual containers which are to 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 the person claims to be and that the remains in question can be identified, but the person does not remove the remains, the undertaker must comply with any reasonable request that the person makes 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 to the Registrar-General by the undertaker 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 of the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority.

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions 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<sup>(4)</sup> (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

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(4) 1857 c.81. Section 25 was substituted by section 2 of Church of England (Miscellaneous Provisions) Measure 2014 (2014 No. 1).