
STATUTORY INSTRUMENTS

2021 No. 1259

The South Humber Bank Energy Centre Order 2021

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the South Humber Bank Energy Centre Order 2021 and comes into force on 2nd December 2021.

Commencement Information

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

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1980 Act” means the Highways Act 1980(2);

“the 1990 Act” means the Town and Country Planning Act 1990(3);

“the 1991 Act” means the New Roads and Street Works Act 1991(4);

“the 2008 Act” means the Planning Act 2008(5);

“the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(6);

“access and rights of way plan” means the plan submitted under regulation 5(2)(k) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“Anglian Water” means Anglian Water Services Limited (company number 2366656) whose registered address is Lancaster House Lancaster Way, Ermine Business Park, Huntingdon, Cambridge, United Kingdom PE29 6XU;

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 of the 1991 Act (street works in England and Wales) save that “apparatus” further includes pipelines (and parts of them), aerial markers,

(1) 1961 c. 33.

(2) 1980 c. 66.

(3) 1990 c. 8.

(4) 1991 c. 22.

(5) 2008 c. 29.

(6) S.I. 2009/2264, as amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.

cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) to this Order, which is development within the meaning of section 32 of the 2008 Act (meaning of “development”);

“biodiversity strategy” means the biodiversity strategy dated April 2021 and certified as such by the Secretary of State for the purposes of this Order;

“the book of reference” means the book of reference submitted under regulation 5(2)(d) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“the charge” means the charge held by Lloyds Bank plc registered at HM Land Registry against title number HS239444 dated 18 December 2018;

“commence” means the carrying out of a material operation comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the environmental statement” means the environmental statement submitted under regulation 5(2)(a) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“EP Waste Management Limited” means EP Waste Management Limited (Company No. 12144128) whose registered office is Paradigm Building, 3175 Century Way, Thorpe Park, Leeds, United Kingdom LS15 8ZB;

“EP SHB Limited” means EP SHB Limited (Company No. 02571241) whose registered office is Berger House, 36-38 Berkeley Square, London, United Kingdom W1J 5AE;

“footpath” and “footway” have the same meaning as given in section 329(1) of the 1980 Act;

“framework construction traffic management plan” means the plan dated December 2020 included as annex 28 of appendix 9A of the environmental statement;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the indicative landscape strategy” means the indicative landscape strategy submitted under regulation 5(2)(q) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“the indicative lighting strategy” means the indicative lighting strategy submitted under regulation 5(2)(q) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“the land plans” means the land plans submitted under regulation 5(2)(i) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“Lloyds Bank plc” means Lloyds Bank plc (Company No. 00002065) whose registered office is 25 Gresham Street, London, EC2V 7HN;

“maintain” includes (i) inspect, repair, adjust, alter, refurbish or improve the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to materially new or materially different environmental effects; and “maintenance” and “maintaining” are to be construed accordingly;

“material operation” has the same meaning as in section 155 of the 2008 Act;

“National Grid” means National Grid Electricity Transmission plc or National Grid Gas plc as the context requires;

“National Grid Electricity Transmission plc” means National Grid Electricity Transmission plc (Company No. 2366977) whose registered office is at 1-3 Strand, London WC2N 5EH;

“National Grid Gas plc” means National Grid Gas plc (Company No. 2006000) whose registered office is at 1-3 Strand, London WC2N 5EH;

“Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN;

“the Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981 (interpretation)(7);

“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 of the Harbours Act 1964 (interpretation)(8), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation;

“relevant planning authority” means the planning authority for the area in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

“requirements discharge schedule” means a document setting out the following information—

- (a) the submissions and approvals that have been made in relation to each condition attached to the SHBEC planning permission;
- (b) the submissions and approvals that the undertaker anticipates are required pursuant to each requirement;
- (c) details of any outstanding applications for discharge of conditions attached to the SHBEC planning permission and which will be subject to article 5(2)(b)(iii); and
- (d) any steps to which paragraph 36 of Schedule 2 applies;

“section 106 agreement” means the agreement made pursuant to section 106 of the 1990 Act between North East Lincolnshire Borough Council and EP SHB Limited dated 11 April 2019 as varied by a deed of variation made between the same parties dated 19 April 2021;

“SHBEC planning permission” means the planning permission for an energy from waste generating station of up to 49.9MW gross generation, granted by North East Lincolnshire Council on 12 April 2019 with reference DM/1070/18/FUL and including any variation and amendment to it;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act (statutory undertakers’ land);

“street” means a street within the meaning of section 48 of the 1991 Act (streets, street works and undertakers), together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“street works” means the works listed in article 10(1);

(7) 1981 c. 67.

(8) 1964 c. 40. Paragraph 9B was inserted into Schedule 2 by paragraph 9 of Schedule 3 of the Transport and Works Act 1992 (c. 42). There are other amendments to the 1964 Act that are not relevant to this Order.

“swept path analysis plan” means the site entrance swept path analysis and visibility splay drawings dated January 2021 or such other alternative plan as the highway authority may approve;

“undertaker” means EP Waste Management Limited or a person who has the benefit of this Order in accordance with articles 8 and 9;

“varied condition” means a condition of the SHBEC planning permission—

- (a) that is imposed at any time under a new planning permission pursuant to section 73 of the 1990 Act (determination of applications to develop land without compliance with conditions previously attached) and which is in variance with the conditions under the original SHBEC planning permission as issued on 12 April 2019;
- (b) which has at any time been varied pursuant to section 96A of the 1990 Act (power to make non-material changes to planning permission or permission in principle); or
- (c) where the numbering of the condition has changed compared to the numbering as originally issued on 12 April 2019;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“working day” means any day other than a Saturday, Sunday or English bank or other public holiday; and

“the works plans” means the works plans submitted under regulation 5(2)(j) of the 2009 Regulations and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) All distances, directions, measurements and lengths referred to in this Order are approximate, except the measurements and lengths set out in requirement 3.

(3) All areas described in square metres in the book of reference are approximate.

(4) References in this Order to “numbered works” or “Work No” are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans.

(5) The expression “includes” is to be construed without limitation.

Commencement Information

I2 Art. 2 in force at 2.12.2021, see [art. 1](#)

Electronic Communications

3.—(1) In this Order, subject to Article 26—

- (a) references to documents, plans, drawings, certificates, or to copies, include references to them in electronic form; and
- (b) references to a form of communication being “in writing” include references to an electronic communication that satisfies the conditions in paragraph (3); and “written” and cognate expressions are to be construed accordingly.

(2) If an electronic communication is received outside the recipient’s business hours, it is to be taken to have been received on the next working day.

(3) The conditions are that the communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(4) For the purposes of paragraph (3)(b), a communication is legible in all material respects if the information contained in it is available to the recipient to no lesser extent than it would be if transmitted by means of a document in printed form.

(5) In this article “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)(9).

Commencement Information

I3 Art. 3 in force at 2.12.2021, see [art. 1](#)

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

4.—(1) Subject to the provisions of this Order the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

(3) In paragraph (2), “limits of deviation” means the limits of deviation shown for each work number on the works plans.

Commencement Information

I4 Art. 4 in force at 2.12.2021, see [art. 1](#)

Effect of the Order on the SHBEC planning permission

5.—(1) The undertaker must not commence any part of the authorised development pursuant to this Order until notice has been served on the relevant planning authority.

(2) If the undertaker serves a notice under this article—

(a) there must be no further development under the SHBEC planning permission; and

(b) from the date of the undertaker’s notice—

(i) the conditions of the SHBEC planning permission will cease to have effect within the Order limits;

(ii) the requirements apply to development that has taken place or is to take place within the Order limits and which is comprised in the authorised development; and

(iii) any application for discharge of a condition listed in column (1) of Schedule 3 (deemed approval of matters referred to in requirements) which was outstanding at the date of the undertaker’s notice will be treated as an application for discharge of the corresponding requirement listed in column (2) of Schedule 3.

(9) 2000 c. 7. As amended by section 406(1) of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 c. 7.

(3) Despite paragraph (1), the undertaker may exercise any other powers under this Order in respect of any part of the authorised development prior to, or following service of, notice under paragraph (2).

(4) Without prejudice to the generality of paragraph (3), the undertaker may seek an approval under or take any other action in relation to any requirement prior to or following the service of notice under paragraph (1).

(5) Subject to paragraph (6), where details, plans or any other matters have been approved or agreed by the relevant planning authority under a condition of the SHBEC planning permission in column (1) of Schedule 3 prior to the date on which the undertaker serves notice under paragraph (1) they are deemed to have been approved for the purpose of the corresponding requirement in column (2) of Schedule 3 from the date of the undertaker's notice.

(6) Paragraph (5) does not apply to a varied condition unless the relevant planning authority issues a notice pursuant to paragraph (7).

(7) The relevant planning authority may issue a notice to the undertaker confirming—

- (a) that the discharge of details, plans or other matters in paragraph (5) applies to a varied condition; and
- (b) the number of the relevant condition and requirement to which the deemed discharge applies in cases where the numbering of the conditions of the SHBEC planning permission has changed compared to those as originally issued on 12 April 2019.

(8) Where paragraph (7)(b) applies, the numbering of the corresponding condition and requirement in Schedule 3 ^[F1]does] not apply.

(9) The relevant planning authority may only issue a notice pursuant to paragraph (7) where it has been demonstrated to the satisfaction of that authority that the application of paragraph (5) will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(10) The undertaker must issue a requirements discharge schedule with a notice served under paragraph (2).

(11) The relevant planning authority must, within three weeks of receipt of the requirements discharge schedule, notify the undertaker that the details set out in the requirements discharge schedule—

- (a) are agreed; or
- (b) are not agreed.

(12) Where paragraph (11)(b) applies, the relevant planning authority must provide details of the parts which it considers are not correct.

(13) The relevant planning authority must include a copy of a notice served by the undertaker under paragraph (2) and a copy of the relevant planning authority's notice under paragraph (11) in the planning register.

(14) In this article, “planning register” means the register which the relevant planning authority is required to maintain pursuant to section 69 of the 1990 Act (register of applications etc.)(10).

Textual Amendments

- F1** Word in art. 5(8) substituted (5.4.2022) by [The South Humber Bank Energy Centre \(Correction\) Order 2022 \(S.I. 2022/421\)](#), art. 1(2), [Sch.](#)

Commencement Information

I5 Art. 5 in force at 2.12.2021, see [art. 1](#)

Maintenance of authorised development

6.—(1) The undertaker is authorised to, and may at any time, maintain the authorised development subject to any provision in this Order, including the requirements, or to an agreement made under this Order.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Commencement Information

I6 Art. 6 in force at 2.12.2021, see [art. 1](#)

Operation of authorised development

7.—(1) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of a generating station.

Commencement Information

I7 Art. 7 in force at 2.12.2021, see [art. 1](#)

Benefit of the Order

8.—(1) Subject to paragraph [\(2\)](#) and article [9](#) (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph [\(1\)](#) does not apply to Work No. 2(e) in respect of which the Order is for the benefit of the undertaker and EP SHB Limited.

Commencement Information

I8 Art. 8 in force at 2.12.2021, see [art. 1](#)

Consent to transfer benefit of the Order

9.—(1) Subject to paragraph [\(4\)](#) the undertaker may—

- (a)** transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b)** grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers in paragraph (1) except where the transferee or lessee is—

- (a) the holder of a licence under section 6 of the Electricity Act 1989 (licences authorising supply, etc.)(11);
- (b) in relation to a transfer or lease of utility or other infrastructure connection works, the relevant statutory undertaker or licence holder; or
- (c) in relation to a transfer or lease of any works within a highway, a highway authority responsible for the relevant highway.

(5) Where the consent of the Secretary of State is not required under paragraph (4) the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

- (a) the name and contact details of the person to whom the benefit of the powers are to be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer is proposed to take effect;
- (c) the powers to be transferred or granted;
- (d) the restrictions, liabilities and obligations that are to apply to the person exercising the powers transferred or granted under paragraph (3); and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers are to be transferred or granted as specified in that notice.

(9) In this article “relevant statutory undertaker” or “licence holder” means a body—

- (a) who falls within section 127(8) of the 2008 Act (statutory undertakers’ land), is a holder of a licence granted under a statute or other regulatory framework; and
- (b) whose duties under the licence include owning, operating or maintaining utilities and or infrastructure and their connections.

Commencement Information

19 Art. 9 in force at 2.12.2021, see [art. 1](#)

(11) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c. 27) and sections 89(3), 136(1), 145(1) and (5) and section 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c. 20) and articles 2, 6(1) and (2) of S.I. 2012/2400. There are other amendments to this section that are not relevant to this Order.

PART 3

STREETS

Street works

10.—(1) The undertaker may, for the purposes of the authorised development, enter the streets specified in Schedule 4 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the person carrying out any works under paragraph (1) is not the street authority the provisions of sections 54 (advance notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any such works.

Commencement Information

II0 Art. 10 in force at 2.12.2021, see [art. 1](#)

Power to alter layout, etc., of streets

11.—(1) The undertaker may for the purposes of the authorised development alter the layout of, or carry out any works in, the street specified in column (2) of Schedule 5 (streets subject to permanent alteration of layout) in the manner specified in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may for the purposes of constructing and maintaining the authorised development alter the layout of any street or construct any works in the street and, without limitation on the scope of this paragraph—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being constructed.

Commencement Information

III Art. 11 in force at 2.12.2021, see [art. 1](#)

Construction and maintenance of new or altered means of access

12.—(1) The means of access specified in Part 1 (those parts of the access to be maintained at the public expense) of Schedule 6 (access) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 (those parts of the access to be maintained by the street authority) of Schedule 6 (access) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(5) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker is not by reason of any duty under that section to maintain a street to be taken to be a street authority in relating to that street for the purposes of Part 3 of that Act (street works in England and Wales); or
- (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

(6) Paragraphs (1) and (2) do not apply to any works which are carried out under an agreement made with the street authority pursuant to the 1980 Act.

Commencement Information

112 Art. 12 in force at 2.12.2021, see [art. 1](#)

Temporary stopping up of streets and public rights of way

13.—(1) The undertaker may, during and for the purposes of carrying out and maintaining the authorised development, temporarily stop up, alter or divert any street or public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street or public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in column (2) of Schedule 7 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(4) The undertaker may not temporarily stop up, alter or divert—

- (a) any street or public right of way specified in paragraph (3) without first consulting the highway authority; and
- (b) any other street or public right of way without the consent of the highway authority and the highway authority may attach reasonable conditions to any such consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

Commencement Information

I13 Art. 13 in force at 2.12.2021, see [art. 1](#)

Agreements with street authorities

14.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;
- (d) any stopping up, alteration or diversion of a street authorised by this Order;
- (e) the undertaking in the street of any of the works referred to in article 12(1) (construction and maintenance of new or altered means of access); or
- (f) the adoption, by a street authority which is the highway authority, of works—
 - (i) undertaken on a street which is a publicly maintainable highway; and
 - (ii) which the undertaker and highway authority agree are to be adopted as a publicly maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Commencement Information

I14 Art. 14 in force at 2.12.2021, see [art. 1](#)

PART 4

SUPPLEMENTAL POWERS

Discharge of water

15.—(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 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 of the Water Industry Act 1991 (right to communicate with public sewers)(**12**).

(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.

(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; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Except as authorised under this Order, the undertaker must not, in constructing or maintaining works, 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 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 requires a licence under the Environmental Permitting (England and Wales) Regulations 2016(**13**).

(8) In this article expressions, excluding “public sewer or drain” and “watercourse”, used both in this article and in the Water Resources Act 1991(**14**), have the same meaning as in that Act.

Commencement Information

I15 Art. 15 in force at 2.12.2021, see [art. 1](#)

(12) [1991 c. 56](#). Section 106 was amended by sections 35(1) and (8), 43(2) and 56(7) of, and Schedule 2 to, the Competition and Service (Utilities) Act [1992 \(c. 43\)](#), sections 36(2) and 99(1), (2), (4), (5)(a), (5)(b), (5)(c) 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 \(c. 29\)](#).

(13) [S.I. 2016/1154](#).

(14) [1991 c. 57](#).

Authority to survey and investigate the land

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

- (a) must, if so required, 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.

(4) No trial holes 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.

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

Commencement Information

116 Art. 16 in force at 2.12.2021, see [art. 1](#)

PART 5 OPERATIONS

Felling or lopping of trees

17.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(4) The undertaker may not pursuant to paragraph (1) fell or lop a tree within the extent of the highway maintainable at the public expense without the consent of the highway authority.

(5) Save in the case of emergency, the undertaker must not enter any land under paragraph (1) without serving notice of the intended entry on the owners and occupiers of that land and, where the land is a highway maintainable at the public expense, on the highway authority.

(6) The notice under paragraph (5) must be served not less than 14 days before entering the land.

(7) In carrying out any activity authorised by paragraph (1) the duty contained in section 206(1) of the 1990 Act(15) (replacement of trees) does not apply.

Commencement Information

I17 Art. 17 in force at 2.12.2021, see [art. 1](#)

PART 6

MISCELLANEOUS AND GENERAL

Protective provisions

18. Schedule 8 (protective provisions) has effect.

Commencement Information

I18 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

I19 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.

(15) Section 206 was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008.

Commencement Information

I20 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(**16**) (interpretation of chapter 1); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

Commencement Information

I21 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—

(16) 2003 c. 21. There are amendments to this section that are not relevant to this Order.

- (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.

Commencement Information

I22 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

I23 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)⁽¹⁷⁾ 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⁽¹⁸⁾; 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

⁽¹⁷⁾ 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.

⁽¹⁸⁾ 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.

by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Commencement Information

I24 Art. 24 in force at 2.12.2021, see [art. 1](#)

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

I25 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)(**19**) as it applies for the purposes of this article, the proper address of any person in relation to the service

(19) 1978 c. 30.

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—

- (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

126 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

I27 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 [F²eight 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 [^{F3}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

- F2** 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.](#)
- F3** 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.](#)
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Commencement Information

- I28** 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.

Commencement Information

I29 Art. 29 in force at 2.12.2021, see [art. 1](#)

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Gareth Leigh
Head of Energy Infrastructure Planning
Department for Business, Energy and Industrial
Strategy

Changes to legislation:

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