
STATUTORY INSTRUMENTS

2021 No. 1259

The South Humber Bank Energy Centre Order 2021

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.

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.

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.

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.

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.