
STATUTORY INSTRUMENTS

2023 No. 218

The A47 Wansford to Sutton Development Consent Order 2023

PART 7

MISCELLANEOUS AND GENERAL

Removal of human remains

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

(2) Subject to paragraph (11) before any such remains are removed from the specified land the undertaker must consult the local planning authority on the intended removal, following which the undertaker must give notice of the intended removal describing the specified land and stating the general effect of the following provisions of this article by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land for a minimum of 28 days.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the local planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) 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.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

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

and that person is to, 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 (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to 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.

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

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land;
 - (b) such notice is given and no application is made under paragraph (6) 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 (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
 - (d) it is determined that the remains to which any such notice relates cannot be identified,
- subject to paragraph (9) 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 reinterred 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.
- (9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.
- (10) On the re-interment or cremation of any remains under this article—
- (a) a certificate of re-interment or cremation is to 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 the record mentioned in paragraph (8) is to be sent by the undertaker to the local planning authority.
- (11) No notice is required under paragraph (2) before the removal of any human remains where the undertaker is satisfied—
- (a) that the remains were interred more than 100 years ago; and
 - (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.
- (12) In the case of remains in relation to which paragraph (11) applies, the undertaker—
- (a) may remove the remains;
 - (b) must apply for a direction from the Secretary of State under paragraph (13) as to their subsequent treatment; and
 - (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.
- (13) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.
- (14) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.
- (15) Section 25(1) (offence of removal of body from burial ground) of the Burial Act 1857 does not apply to a removal carried out in accordance with this article.
- (16) Section 239 (use and development of burial grounds) of the 1990 Act applies—

(1) 1857 c. 81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (No. 1) and amended by section 96(1) of, and paragraph 1 of Schedule 3 to, the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (No. 3).

- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
- (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 34 (temporary use of land for carrying out the authorised development) or 35 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order,

and section 240 of the 1990 Act is to be interpreted in accordance with paragraph (17).

(17) In section 240 of the 1990 Act—

- (a) reference in subsection (1) to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (15) of this article; and
- (b) reference in subsection (3) to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.

(18) The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950(2) do not apply to the authorised development.

(19) In this article “the specified land” means any land within the Order limits.

Commencement Information

II Art. 51 in force at 10.3.2023, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The A47 Wansford to Sutton Development Consent Order 2023, Section 51.