
STATUTORY INSTRUMENTS

2005 No. 2222

The River Tyne (Tunnels) Order 2005

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

3.—(1) The undertaker may—

- (a) construct and maintain the scheduled works; and
- (b) break out and remove such structures that are contained within the limits of land to be acquired or used as may be necessary, expedient or convenient for the construction or maintenance of the scheduled works.

(2) Subject to article 4, the scheduled works shall be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (5), the undertaker may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction and maintenance of the scheduled works.

(4) The undertaker may remove any works carried out by it pursuant to this Order which have been constructed as temporary works or which it no longer requires.

(5) Paragraph (3) shall only authorise the carrying out or maintenance of works outside the limits of deviation if the works are carried out, constructed or maintained on land contained within the limits of land to be acquired or used.

Power to deviate

4. In constructing or maintaining the scheduled works, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation; and
- (b) deviate vertically from the levels shown for those works on the deposited sections—
 - (i) in respect of any structure not being beneath the River Tyne or Howdon Basin to any extent not exceeding 2 metres upwards;
 - (ii) to any such extent downwards as may be necessary, convenient or expedient.

Streets

Power to execute street works

5.—(1) The undertaker may, for the purpose of or in connection with the authorised works, enter upon so much of any of the streets specified in Schedule 2 to this Order as is within the limits of land to be acquired or used and may—

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

(2) This article is subject to paragraph 3 of Schedule 11 to this Order.

(3) In this article “apparatus” has the same meaning as in Part III of the 1991 Act.

Power to alter layout of streets

6.—(1) The undertaker may alter the layout of any street specified in columns (1) and (2) of Schedule 2 to this Order in the manner specified in relation to that street in column (2) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may for the purpose of or in connection with the authorised works alter the layout of any street in or adjacent to which any authorised works are constructed or to be constructed and, without prejudice to the generality of the foregoing, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, cycle track or verge within the street,
- (b) alter the level of any such kerb, footway, cycle track or verge, and
- (c) reduce or increase the width of the carriageway of the street by forming a reserved area in the street as a stopping place for vehicles or by carrying out other works for that purpose.

(3) The powers in paragraph (2) shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

Stopping up of streets and extinguishments of rights

7.—(1) Subject to the provisions of this article, the undertaker may, for the purpose of or in connection with the carrying out or maintenance of the authorised works, stop up each of the streets specified in columns (1) and (2) of each Part of Schedule 3 to this order to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Part.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 3 to this Order (being a street for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless either—

- (a) the new street to be substituted for it, and which is specified in relation to it in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and thereafter maintained by the undertaker to the reasonable satisfaction of the street authority between the commencement and termination

points of the street to be stopped up until the completion of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article the undertaker may, without making any payment, appropriate and use for the purpose of or in connection with the authorised works so much of the site of the street as is bounded on both sides by land owned by the undertaker or occupied by the undertaker pursuant to the provisions of this Order.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961(1).

(5) This article is subject to paragraph 2 of Schedule 11 to this Order.

Temporary stopping up of streets

8.—(1) The undertaker may, during and for the purpose of the carrying out or maintenance of the authorised works, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the generality of paragraph (1), the undertaker may use any street stopped up under the powers of this article as a temporary working site.

(3) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 4 to this Order to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.

(5) Save in respect of any street which is a tunnel road, the undertaker shall not exercise the powers of this article—

- (a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

(6) Where the street authority imposes reasonable conditions on its consent under this article the undertaker shall not exercise its powers under this article except in accordance with those conditions.

(7) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part III of the 1991 Act (street works) as major highway works if—

- (a) they are works of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works) and would have been major highway works had they been executed by the highway authority, or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the Highways Act 1980(2) (dual carriageways and roundabouts).

(1) 1961 c. 33.
(2) 1980 c. 66.

(8) Section 56 (directions as to timing) and section 58 (restrictions following substantial road works) of the 1991 Act shall not apply in relation to any works executed under the powers of this Order.

(9) The provisions of the 1991 Act mentioned in paragraph (10) and any regulations made, or code of practice issued or approved, under those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the undertaker under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the undertaker.

(10) The provisions of the 1991 Act referred to in paragraph (9) are—

- section 54 (advance notice of certain works),
- section 55 (notice of starting date of works),
- section 59 (general duty of street authority to co-ordinate works),
- section 60 (general duty of undertakers to co-operate),
- section 69 (works likely to affect other apparatus in the street),
- section 76 (liability for cost of temporary traffic regulation),
- section 77 (liability for cost of use of alternative route), and

all such other provisions as apply for the purposes of the provisions mentioned above.

Access to works

9. The undertaker may, for the purpose of or in connection with the authorised works, form and lay out means of access or improve existing means of access in or near to the locations within the limits of land to be acquired or used shown on the deposited plans or listed in Schedule 5, within the boundaries of the street in question, as the undertaker reasonably requires for the purpose of or in connection with the authorised activities and as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

Construction and maintenance of new or altered streets

10.—(1) Subject to paragraph (5), any street to be constructed under this Order and not comprised within the tunnel crossing shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Subject to paragraph (5), where a street not comprised within the tunnel crossing is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways) and the undertaker shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

(4) Nothing in this article shall have effect in relation to street works in respect of which the provisions of Part III of the 1991 Act apply.

(5) Nothing in this article shall operate to cause any street comprised in the tunnel crossing to be dedicated as highway unless the undertaker shall so elect.

(6) Notwithstanding anything contained in the Highways Act 1980 or the 1991 Act or in any other enactment, no person shall enter upon, break up or interfere with any of the tunnel roads or the carriageways, footways and verges of the same for the purpose of placing, laying down or doing anything in relation to any main pipe or wire or other apparatus or executing any work therein, thereon or thereunder, except with the consent of the undertaker and in accordance with such terms and conditions as the undertaker may determine.

Agreements with street authorities

- 11.**—(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 a railway or any part of the tunnel crossing) under the powers conferred by this Order;
 - (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a railway or any part of the tunnel crossing;
 - (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (d) the execution in the street of any of the works referred to in articles 5 to 10.
- (2) Such an 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; and
 - (b) contain such terms as to payments and otherwise as the parties consider appropriate.

Trunk roads

12.—(1) On the date on which the roads comprised in Works Nos. 7U and 7V are open for public use those roads shall become trunk roads as if they had become so by virtue of an order under section 10(2) of the Highways Act 1980 specifying that date as the date on which they were to become trunk roads.

(2) Subject to paragraph (3), any power under the 1984 Act to make an order or to give a direction with respect to the roads comprised in Works Nos. 7U and 7V shall be exercisable by the Secretary of State as if he were the traffic authority before that road is open for public use in any case where it appears to the Secretary of State to be expedient that the order or (as the case may be) the direction should have effect immediately the road becomes open for public use.

(3) The procedure otherwise applicable under the 1984 Act in relation to the making of any such order or the giving of any such direction shall apply in any such case with such modifications as the Secretary of State may determine; and he shall publish notice of these modifications in such manner as appears to him to be appropriate for bringing them to the notice of persons likely to be affected by the provisions of any such order or (as the case may be) by any such direction.

Supplemental powers

Discharge of water

13.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water for the purpose of or in connection with the authorised activities and for that purpose may lay down, take up and alter pipes and may, on any land shown within the limits of land to be acquired or used, make openings into, and connections with, a watercourse, public sewer or drain.

(2) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs and in the case of the River Tyne and

Howdon Basin with the consent of the Port Authority; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The undertaker shall not make any opening into a public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) Notwithstanding the provisions of paragraph (1) or any consent given under paragraph (2) the undertaker shall not discharge water, whether directly or indirectly, into any public sewer or drain until it shall have implemented to the reasonable satisfaction of the authority to whom such public sewer or drain belongs such measures as are necessary in the reasonable opinion of that authority to avoid any adverse impact upon the undertaking of the authority.

(5) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse, 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 or oil or matter in suspension and in the case of water, not being domestic sewage, discharged directly or indirectly into a public sewer or drain from the tunnel crossing, shall secure that it is free from any such substance or matter.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(3).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, the Port Authority or a local authority;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Safeguarding works to buildings

14.—(1) Subject to the following provisions of this article, the undertaker may at its own expense and from time to time carry out safeguarding works to any building lying within the limits of land to be acquired or used.

(2) Safeguarding works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
- (b) after the completion of that part of the authorised works, at any time up to the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(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 belonging to it.

(4) For the purpose of carrying out safeguarding works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land belonging to it; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land (but not any building erected on it).

(5) Before exercising a right—

(3) 1991 c. 57.

- (a) under paragraph (1) to carry out safeguarding works to a building,
- (b) under paragraph (3) to enter a building,
- (c) under paragraph (4)(a) to enter a building or land, or
- (d) under paragraph (4)(b) to enter land,

the undertaker shall, 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 the right and, in a case falling within sub-paragraph (a) or (c), specifying the safeguarding works proposed to be carried out.

(6) Where 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 the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 54.

(7) The undertaker shall compensate the owners and occupiers of any building or land in relation to which the powers of this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) safeguarding works are carried out under this article to a building, and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed within the vicinity of the building is first opened for use it appears that the safeguarding works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,

the undertaker shall compensate the owners and occupiers for any damage sustained by them.

(9) Subject to article 53, nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part I of the Land Compensation Act 1961(4).

(11) In this article “safeguarding works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the authorised works;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the authorised works; and
- (c) any works the purpose of which is to secure the safe operation and use of the tunnel crossing or to prevent or minimise the risk of such operation and use being disrupted.

Planning permission: supplementary matters

15. Planning permission which is deemed by virtue of a direction under section 90(2A) of the Town and Country Planning Act 1990(5) to be granted in relation to work authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act.

Power to survey and investigate land

16.—(1) The undertaker may for the purposes of this Order—

- (a) survey or investigate any land shown within the limits of land to be acquired or used which may be affected by the authorised activities;

(4) 1961 c. 33.

(5) 1990 c. 8.

- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land 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 archaeological investigation on any such land;
 - (d) place or leave on, in, under or over and remove from the land included in sub-paragraph (a) apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraph (a) or (b); and
 - (e) enter on the land referred to in sub-paragraph (a) for the purpose of exercising the powers conferred by sub-paragraph (a), (b), (c) or (d).
- (2) No land may be entered, or equipment placed or left on or removed from land under paragraph (1), unless at least 7 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) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
 - (b) may take with him such vehicles and equipment as are necessary to exercise any of the powers conferred by paragraph (1).
- (4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.
- (5) The undertaker shall pay compensation for any damage occasioned by the exercise of the powers conferred by this article to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961⁽⁶⁾.

Additional powers

17.—(1) Subject to Part 3 of Schedule 10 to this Order but otherwise without prejudice to the other powers conferred by this Order or otherwise available to it, the undertaker may within the tunnel area for the purpose of or in connection with the carrying out and maintenance of the authorised works to be carried out within the tunnel area and notwithstanding any interference thereby with any public or private rights—

- (a) alter, relocate or replace any tidal work,
 - (b) carry out excavations and clearance, dredging, deepening, dumping and pumping operations,
 - (c) subject to article 48, sell, use, appropriate and dispose of any materials (including liquids) obtained by it in carrying out any such operations,
 - (d) remove or relocate any mooring,
 - (e) remove and relocate any vessel or structure sunk, stranded or abandoned or moored or left (whether lawfully or not),
 - (f) temporarily moor or anchor vessels and structures,
 - (g) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of the River Tyne and Howdon Basin, and
 - (h) construct, place, maintain and remove temporary works and structures,
- in such manner and to such extent as may appear to it to be necessary or convenient.

⁽⁶⁾ 1961 c. 33.

(2) Except in the case of urgency, the undertaker will use reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel or structure affected by the proposal to exercise the powers of paragraph (1)(d) or (e) before the exercise of that power.

Prohibitions within the tunnel area

18.—(1) Notwithstanding anything in any other enactment or rule of law but subject to the provisions of this article, the Port Authority shall, at the reasonable request of the undertaker and at the undertaker's expense, by direction close the whole or any part of the tunnel area to navigation by all vessels or by any class of vessel.

(2) Subject to paragraph (3), a direction under paragraph (1) shall specify the duration of the closure, the part of the River Tyne and Howdon Basin affected and the vessels to which it applies.

(3) The duration of a closure under this article may be extended by the Port Authority until it is satisfied (acting reasonably) that any navigation channel to be opened following the closure has adequate depth and is free of obstruction.

(4) A person may not, without the written consent of the Port Authority, within any part of the tunnel area, during a period when it is closed to navigation under this article—

- (a) navigate any vessel or cause or permit a vessel to be moored if the vessel concerned is subject to the closure,
- (b) lay down or place any mooring or apparatus, including mains, sewers, drains and cables, or
- (c) undertake or cause or permit any other operation or activity,

unless he does so in compliance with any direction which the Port Authority has given either in an emergency or for naval or military operational requirements which the Port Authority is satisfied it is not reasonably practicable to fulfil at any other time.

(5) Any person who contravenes the requirements of paragraph (4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Except in an emergency, the Port Authority shall at the undertaker's expense publish notice of any direction given under paragraph (1) in at least one local newspaper circulating in the area in which the tunnel crossing is situated, not less than 14 days before the direction is to take effect.

(7) In making a direction pursuant to paragraph (1), the Port Authority shall ensure that no more of the tunnel area is closed to navigation at any time by all vessels, or by any class of vessel, than is at that time necessary in the circumstances.

(8) If complete closure of the tunnel area to all vessels or to any particular class of vessels is necessary at any time, the undertaker shall secure that any work of construction or maintenance of the new tunnel shall be carried out as soon as reasonably practicable to ensure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the tunnel area.

(9) Without prejudice to the provisions of article 22 neither the undertaker nor the Port Authority shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the tunnel area under this article.

(10) A direction given under this article may be varied or revoked by a subsequent direction given under this article.

Protection of tunnel, etc.

19.—(1) A person may not without the consent of the undertaker use, for any purpose, any part of the authorised works.

(2) A person may not, without the consent in writing of the undertaker—

(a) interfere with any part of the authorised works; or
(b) remove, move or otherwise interfere with any such work or any machinery, apparatus, tools or other things in use or intended for use in connection with the authorised activities, and to the extent that any activity within sub-paragraph (a) or (b) affects a tidal work the consent in writing of the Port Authority shall also be required, provided that this paragraph shall not require the undertaker to obtain the consent of the Port Authority except in accordance with Part 3 of Schedule 10 to this Order.

(3) Any consents required under this article may be given subject to conditions.

(4) A person who without reasonable excuse contravenes paragraph (1) or (2), or fails to comply with any conditions attached to a consent given by the undertaker or the Port Authority under paragraph (3), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Restriction on mooring of vessels, etc.

20.—(1) During the period of the construction of the new tunnel, a person who is not engaged in the construction of the authorised works shall not, without the consent in writing of the Port Authority and the undertaker (which consent may be given subject to conditions), moor any vessel or place any article over or on the bed of the river within the tunnel area; and after that period, a person shall not within the exclusion zone—

- (a) so moor without the consent of the Port Authority; or
- (b) so place without the consent of the Port Authority and the undertaker.

(2) In this article “exclusion zone” means so much of the River Tyne as is bounded by imaginary parallel straight lines drawn at a distance of 40 metres on either side of the centre line of the new tunnel.