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STATUTORY INSTRUMENTS

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**2011 No. 41**

**The River Mersey (Mersey Gateway Bridge) Order 2011**

**PART 2**

**WORKS PROVISIONS**

Principal powers

**Power to construct and maintain works**

4.—(1) The undertaker may construct and maintain the scheduled works.

(2) Subject to article 5 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5), the undertaker may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (b) works to alter, erect and construct such offices and other buildings, yards, engines, machinery, apparatus, structures and other works, and conveniences as the undertaker sees fit;
- (c) works to construct junctions and communications (including the provision of steps and ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and to widen or alter any highway or access way for the purposes of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
- (d) all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other such works as the undertaker thinks fit;
- (e) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (g) works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (5), the undertaker may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, other than works that would interfere with a navigable watercourse.

(5) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on land shown on the works plans as being within the limits of land to be acquired or used.

**Power to deviate**

5. In constructing or maintaining any of the scheduled works, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plans to the extent of the limits of deviation for that work; and
- (b) deviate vertically from the levels shown on the sections—
  - (i) to any extent not exceeding 3 metres upwards; or
  - (ii) to any extent downwards as may be found to be necessary or convenient.

### **Restriction on works in the River Mersey and saltmarshes**

6. Regardless of the provisions of article 5 (power to deviate), no permanent work or part of such work shall be constructed in the River Mersey except in those areas shaded grey on the works plans.

### **Power to execute street works**

7.—(1) The undertaker may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain 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; and
- (d) execute any 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 9 (provisions relating to statutory undertakers, etc.).

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

### **Stopping up of streets**

8.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 3 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of those Parts of that Schedule.

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

- (a) the new street to be substituted for it, which is specified 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 for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 3 (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or
  - (b) there is no right of access to the land from the street concerned; or
  - (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
  - (d) the owners and occupiers of the land have agreed to the stopping up.
- (5) Where a street has been stopped up under this article—
- (a) all rights of way over or along the street so stopped up shall be extinguished; and
  - (b) the undertaker may appropriate and use for the purposes of its undertaking so much of the site of the street as is bounded on both sides by land owned by the undertaker.
- (6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (7) This article is subject to paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.).

### **Temporary stopping up of streets**

- 9.—(1) The undertaker, during and for the purposes of the execution of the authorised works, may 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 limiting the scope of paragraph (1), the undertaker may use any street stopped up under the powers conferred by this article as a temporary working site.
- (3) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.
- (4) Without limiting the scope of paragraph (1), the undertaker may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of that Schedule.
- (5) The undertaker shall not exercise the powers conferred by 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.
- (6) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Access to works**

10. The undertaker may, for the purposes of the authorised works—
- (a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 5 (access to works); and
  - (b) with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised works.

### **Construction and maintenance of new or altered streets**

**11.**—(1) Subject to the provisions of article 45 (application of section 2 of the 1991 Act) the bridge roads shall be a public highway and shall be maintained by and at the expense of the highway authority from the opening day.

(2) Where a street which is not and is not intended to be a public highway 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) In any action against the undertaker in respect of damage resulting from its failure to maintain a street to which paragraph (2) applies, section 58 of the 1980 Act shall apply as if that street were a highway maintainable at the public expense.

### **Agreements with street authorities**

**12.**—(1) The undertaker may enter into agreements with street authorities with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over a railway;
- (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 article 7(1) (power to execute street works).

(2) Such an agreement may, without limiting the scope 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 payment and otherwise as the parties consider appropriate.

### **Use of the Astmoor Busway for the purposes of the construction of the authorised works**

**13.**—(1) Subject to the provisions of this article and regardless of the Halton Borough Council (Runcorn Busway) Order 1997 the undertaker may, for the purposes of the authorised works, at any time prior to the expiry of 12 months from the opening day use the busway known as the Astmoor Busway for the length of that busway between its junctions with Chadwick Road and Davey Road for the purposes of the authorised works and, in particular, for the diversion of traffic that would otherwise be precluded from the use of that busway.

(2) The undertaker shall consult the traffic authority and the chief officer of police in whose area the busway is situated before complying with the provisions of paragraph (3).

(3) The undertaker shall not exercise the powers conferred by this article unless it has—

- (a) given not less than 6 weeks' notice in writing of its intention to do so to the traffic authority and to the chief officer of police in whose area the road is situated;
- (b) advertised its intention to do so in a newspaper circulating in the area in which the new crossing is situated.

(4) For the purposes of this article “traffic authority” has the meaning given in section 121A of the Road Traffic Regulation Act 1984(1).

Supplemental powers

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(1) 1984 c. 27.

## Discharge of water

14.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works 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 exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(2)</sup>.

(3) The undertaker shall 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, but shall not be unreasonably withheld.

(4) The undertaker shall 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, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or 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, oil or matter in suspension.

(7) Nothing in this article obviates the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010<sup>(3)</sup>.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a local authority, the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of the Harbours Act 1964<sup>(4)</sup>, an internal drainage board, a joint planning board, or a sewerage undertaker; and
- (b) other expressions, except watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

## Protective works to buildings

15.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers to be necessary or expedient.

(2) Protective 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 the construction of that part of the authorised works in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

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(2) 1991 c. 56.

(3) S.I. 2010/675.

(4) 1964 c. 40.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

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

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 62 (arbitration).

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

(8) Where—

- (a) protective 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 in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the authorised works,

the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without prejudice to article 61 (no double recovery) 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 1 of the 1961 Act.

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

### **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 Order limits or which may be affected by the authorised works;
- (b) without limiting the scope 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 limiting the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (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; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the 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 authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(5).

### **Additional powers**

17.—(1) Subject to Schedule 10 (protective provisions) and having had reasonable regard to any relevant representations made by any user of the River Mersey but otherwise without prejudice to the other powers conferred by this Order or otherwise available to it, the undertaker may within the new crossing area for the purpose of or in connection with the carrying out and maintenance of the authorised works to be carried out within the new crossing area and regardless of any interference with any public or private rights—

- (a) alter, relocate or replace any navigation work;
- (b) carry out excavations and clearance, dredging, deepening, dumping and pumping operations;
- (c) 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 so far as may be reasonably necessary for the purposes of carrying out or maintaining the authorised works;
- (e) temporarily moor or anchor vessels and structures;
- (f) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of a relevant navigation; and
- (g) 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.

(2) Except in the case of urgency, the undertaker shall use reasonable endeavours to notify the owner of any mooring affected by the proposal to exercise the powers conferred by sub-paragraph (1) (d) before the exercise of those powers.

(3) The undertaker shall pay compensation to any person entitled to compensation under the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by sub-paragraph 1(d).

(4) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

#### **Prohibitions within the new crossing area, etc.**

**18.**—(1) Regardless of anything in any other enactment or rule of law but subject to the provisions of this article, the relevant navigation authority shall, if the undertaker reasonably so requires during construction of the new crossing or at any other time for reasons of public safety, at the request of the undertaker and at the undertaker's expense, by direction close the whole or any part of the new crossing area to navigation by all vessels or by any class of vessel.

(2) In the event that no navigation authority has or admits to have jurisdiction to issue a direction under paragraph (1) the undertaker may by direction close the whole or any part of the new crossing area to navigation by all vessels or by any class of vessel for the purposes of the authorised works during construction of the new crossing or at any other time for reasons of public safety and the provisions of this article shall apply to the undertaker as if the undertaker was the relevant navigation authority.

(3) Subject to paragraph (4), a direction under paragraph (1) or (2) shall specify the duration of the closure, the part of the relevant navigation affected and the vessels to which it applies.

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

(5) A person may not, without the written consent of the relevant navigation authority, within any part of the new crossing area, during a period when it is closed to navigation under this article—

- (a) navigate any vessel or moor a vessel 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 any other operation or activity,

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

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

(7) Except in an emergency, the relevant navigation authority shall at the undertaker's expense publish notice of any direction given under paragraph (1) or (2) in at least one local newspaper circulating in the area in which the works are situated, not less than 14 days before the direction is to take effect.



(8) In making a direction pursuant to paragraph (1) or (2), the relevant navigation authority shall ensure that no more of the new crossing 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.

(9) If complete closure of the new crossing 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 crossing 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 new crossing area.

(10) Without prejudice to article 22 (application of Part 1 of the 1965 Act), neither the undertaker nor the relevant navigation 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 new crossing area under this article.

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

#### **Protection of the new crossing, 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 navigation work the consent in writing of the relevant navigation authority shall also be required, provided that this paragraph shall not require the undertaker to obtain the consent of the relevant navigation authority except in accordance with Schedule 10 (protective provisions).

(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 relevant navigation 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 crossing, a person who is not engaged in the construction of the authorised works shall not, without the consent in writing of the relevant navigation 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 any relevant navigation within the new crossing area; and after that period, a person shall not within an exclusion zone—

(a) so moor without the consent of the relevant navigation authority;

(b) so place without the consent of the relevant navigation authority and the undertaker; or

(c) anchor any vessel except in an emergency.

(2) The restrictions in paragraph (1) shall have effect in relation to the relevant navigation from a day 14 days after notice of their imposition on that relevant navigation has been published in at least one local newspaper circulating in the area in which the authorised works are situated or the day on which a plan, chart or map showing the exclusion zone has been deposited at the principal office of any relevant navigation authority whichever is later.

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(3) In this article “exclusion zone” means so much of any relevant navigation as is bounded by imaginary parallel lines drawn at a distance of 40 metres on either side of the centre line of the new crossing.