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STATUTORY INSTRUMENTS

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**2017 No. 433**

**The Keuper Underground Gas Storage Facility Order 2017**

**PART 4**

**SUPPLEMENTAL POWERS**

**Discharge of water**

**16.**—(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 pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(1) (right to communicate with public sewers).

(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 but such approval must not be unreasonably withheld; and

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

(5) The undertaker may not, in carrying out or maintaining works pursuant to this article, 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 pursuant to this article is as free as may be practicable from gravel, soil or other solid disturbance, oil or matter in suspension.

(7) This article does not authorise the discharge or entry into inland fresh waters or coastal waters of any matter whose entry or discharge into these waters is prohibited by regulation 38 (offences) of the Environmental Permitting (England and Wales) Regulations 2010(2).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency or a harbour authority within the meaning of section 57 of the Harbours Act 1964(3) (interpretation), an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

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(1) 1991 c. 56; section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

(2) S.I. 2010/675.

(3) 1964 c. 40; there are amendments to section 57 that are not relevant to this Order.

- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(4) have the same meaning as in that Act.

### **Protective work to buildings**

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

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after completion of that part of the authorised development in the vicinity of the building at any time up to the decommissioning of the authorised development under paragraph 18 (decommissioning) of Schedule 2.

(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 must, 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 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 40 (arbitration).

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

(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 development carried out 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 carrying out or use of that part of the authorised development,

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

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

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

#### **Authority to survey and investigate the land**

**18.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order land or which may be affected by the authorised development and—

- (a) survey and/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/or subsoil and/or to remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a) carry out ecological and 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/or investigation of land and/or the 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 written 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 upon entering the land, 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,

but such consent must not be unreasonably withheld

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

#### **Temporary closure of, and works in and over, the canal**

**19.**—(1) The undertaker may, subject to Part 3 of Schedule 9 (protective provisions), for the purposes of the carrying out and maintenance of the authorised development temporarily close,

prohibit the use of or restrict the use of, the part of the canal specified in columns (1) and (2) of Schedule 7 (temporary closure and works in the canal) for the purposes specified in column (3).

(2) Without prejudice to paragraph (1) but subject to paragraphs (3), (4) and (5) the undertaker may in connection with the carrying out or maintenance of the authorised development—

- (a) temporarily close part of the canal and carry out works at any point within that relevant part of the canal as the undertaker considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in the relevant part of the canal and may load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials;
- (c) temporarily suspend any right to moor in such manner and to such extent as may appear to the undertaker to be necessary or convenient; and
- (d) on grounds of health and safety only, temporarily close to navigation the relevant part of the canal.

(3) During the period of any closure referred to in paragraph (2) all rights of navigation and other rights relating to and any obligations of the Canal & River Trust to manage the relevant part of the canal so closed are to be suspended and unenforceable against the Canal & River Trust.

(4) The power conferred by paragraph (1) must be exercised in such a way which secures—

- (a) that no more of the relevant part of the canal is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure to navigation of the relevant part of the canal becomes necessary all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

(5) In exercising the powers conferred by paragraph (1) in relation to the relevant part of the canal the undertaker must—

- (a) take such reasonable steps as are necessary to ensure that the functioning of any intake or discharge along the canal is unaffected;
- (b) keep any interference with water levels or flow to a minimum reasonably necessary to carry out the authorised development;
- (c) take such reasonable steps as are necessary to ensure that persons in control of barges or other vessels or craft in the canal are made aware of any temporary closure, prohibition or restriction of use; and
- (d) provide such emergency assistance as may reasonably be requested by persons in control of barges or other vessels or craft in the canal following an accident or mechanical failure, for the safety of persons on board and/or the recovery of the barge, vessel or craft to a location where it can be safely be moored and accessed.

(6) Any person who suffers loss or damage as a result of—

- (a) the suspension of any private right of navigation or the suspension of any private right to use the towpath under this article; or
- (b) any effect of the exercise of the powers conferred by paragraph (1) on the functioning of any intake or discharge along the canal,

is to be entitled to be paid compensation for such loss and damage by the undertaker to be determined, in the case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.