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STATUTORY INSTRUMENTS

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**1999 No. 2981**

**The River Thames (Hungerford Footbridges) Order 1999**

**PART II**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct works**

3.—(1) Subject to paragraph (5) below, the undertaker may:

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

(2) Subject to article 4 below, 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 (4) below, the undertaker may carry out such other works (of whatever nature) as may be necessary convenient or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works.

- (4) Paragraph (3) above shall only authorise the carrying out or maintenance of works outside the limits of deviation if the works are carried out on land specified in columns (1) and (2) of Schedule 2 to this Order for the purposes specified in relation to that land in column (3) of that Schedule.

(5) The undertaker shall not carry out any work which prevents the use of the existing Hungerford footbridge by members of the public until

- (a) either Work No. 1 or Work No. 2 is open for public use; or
- (b) the undertaker has provided, within the limits of deviation, a temporary way on foot across the River Thames for members of the public.

**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 deposited plan entitled “Works Plan” within the limits of deviation; and
- (b) deviate vertically from the levels shown for those works on the deposited sections—
  - (i) to any extent not exceeding 1 metre upwards, and
  - (ii) to any such extent downwards as may be necessary or convenient but subject to the consent in writing of the Port Authority.

## Streets

### Power to execute street works

5.—(1) The undertaker may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 to this Order as is within the limits of deviation 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 or remove it from the street; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c) above.

(2) This article is subject to paragraph 2(3) of Part I of Schedule 10 and 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.

### Stopping up of streets and extinguishment of rights

6.—(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 each Part of Schedule 4 to this Order to the extent specified in column (3) of that Part.

(2) No street specified in columns (1) and (2) of Part I of Schedule 4 to this Order (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 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) with the consent of the street authority, a temporary alternative route is provided between the commencement and termination points of the street to be stopped up until completion of the new street in accordance with sub-paragraph (a) above.

(3) Where a street has been stopped up under this article the undertaker may, without making any payment, appropriate and use for the purposes of the authorised works so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(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

7.—(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 (2) below, prevent all persons from passing along the street.

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(1) 1961 c. 33.

(2) 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.

(3) Without prejudice to the generality of paragraph (1) above, the undertaker may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 5 to this Order to the extent specified in column (3) of that Schedule.

(4) The undertaker shall not exercise the powers of this article—

(a) in relation to any street specified as mentioned in paragraph (3) above 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.

(5) The provisions of the 1991 Act mentioned in paragraph (6) below 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.

(6) The provisions of the 1991 Act referred to in paragraph (5) above 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.

(7) The undertaker shall not stop up any part of Queen's Walk under this article unless a suitable alternative route is first provided and thereafter maintained by the undertaker to the reasonable satisfaction of the street authority.

### **Access to works**

**8.** The undertaker may, for the purposes of the authorised works, form and lay out means of access or improve existing means of access in such locations within the limits of deviation shown on the deposited plans or listed in Schedule 6, within the boundaries of the street in question, as the undertaker reasonably requires for the purposes of the authorised works 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**

**9.—(1)** Any street to be constructed under this Order 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) Where a street 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 as respects which the provisions of Part III of the 1991 Act apply.

### **Dedication and maintenance of highways**

**10.**—(1) Each footbridge deck and each set of stairs comprised in the scheduled works shall be dedicated by the undertaker as a highway as soon as reasonably possible after completion of construction of the deck and sets of stairs comprised in the scheduled work in question.

(2) Any dedication under paragraph (1) above is subject to the rights of the Port Authority under the provisions of Part II of Schedule 10.

### **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) 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;
- (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 5(1) above.

(2) Such an agreement may, without prejudice to the generality of paragraph (1) above—

- (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.

### *Supplemental powers*

### **Discharge of Water**

**12.**—(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 shown within the limit line shown marked “50 metres from new construction” on the deposited plan entitled “Works Plan”, make openings into, and connections with, the 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 Thames 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) 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 or oil or matter in suspension.

(5) 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(2).

(6) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency 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**

**13.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense and from time to time carry out such safeguarding works to any building lying within the relevant distance of any authorised works (other than works under this article), as the undertaker considers to be necessary or expedient.

(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 the construction of that part of the authorised works, 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.

(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) above 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) below)—

- (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—

- (a) under paragraph (1) above to carry out safeguarding works to a building,
- (b) under paragraph (3) above to enter a building,
- (c) under paragraph (4)(a) above to enter a building or land, or
- (d) under paragraph (4)(b) above 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) above, specifying the safeguarding works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d) above, 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 safeguarding works or to enter the building or land to be referred to arbitration under article 36 below.

(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 35 of this Order, 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<sup>(3)</sup>.

(11) In this article—

- (a) any reference to a building within a relevant distance of a work includes—
  - (i) in the case of a work under the surface of the ground, a reference to any building within the relevant distance of the point on the surface below which the work is situated; and
  - (ii) where a work has not commenced, a reference to any building within the relevant distance of the proposed site of the work;
- (b) “safeguarding works”, in relation to a building means—
  - (i) 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
  - (ii) 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; and
- (c) “relevant distance”, in relation to any work, means:
  - (i) in the case of works under the surface of the ground, within the limit line shown marked “50 metres from new construction” on the deposited plan entitled “Works Plan”; and
  - (ii) in any other case, within the limit line shown marked “35 metres from new construction” on the deposited plan entitled “Works Plan”.

### **Power to survey and investigate land**

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

- (a) survey or investigate any land shown within the limit line shown marked “50 metres from new construction” on the deposited plan entitled “Works Plan” which may be affected by the authorised works, but not any building on any such land;
- (b) without prejudice to the generality of sub-paragraph (a) above, 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;

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(3) 1961 c. 33.

- (c) place on, leave on and remove from the land included in sub-paragraph (a) above apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraph (a) or (b) above; and
  - (d) enter on the land included in sub-paragraph (a) above for the purpose of exercising the powers conferred by sub-paragraph (a) or (b) above.
- (2) No land may be entered, or equipment placed or left on or removed from land under paragraph (1) above, 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) above.
- (4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority.
- (5) The undertaker shall make 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(4).