
STATUTORY INSTRUMENTS

2014 No. 2384

**The Thames Water Utilities Limited
(Thames Tideway Tunnel) Order 2014**

PART 2

WORKS PROVISIONS

Supplemental powers

Discharge of water

19.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised project 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) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).

(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, and 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 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, unless otherwise authorised by this Order.

(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 pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by Regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010⁽¹⁾.

(8) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person shall be deemed to have refused consent or approval, as the case may be.

(1) [S.I. 2010/675](#)

(9) 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⁽²⁾ (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991⁽³⁾ have the same meaning as in that Act.

Protective works to buildings and structures

20.—(1) Save as otherwise agreed pursuant to article 20 (13), subject to the following provisions of this article, the undertaker may at its own expense carry out the protective works to any building listed in Schedule 11 (*Protective works*) to this Order which the undertaker considers necessary or expedient.

(2) The protective works may be carried out further to paragraph (1) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey—

- (a) any building to which the power in paragraph (1) applies and any land within the Order limits; and
- (b) where reasonably necessary, any land which is adjacent to the building but outside the Order limits.

(4) For the purpose of carrying out the 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 the Order limits; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside the Order limits, 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)(a) to enter a building and land within the Order limits;
- (c) a right under paragraph 3(b) to enter land;
- (d) a right under paragraph (4)(a) to enter a building and land within the Order limits; or
- (e) a right under paragraph (4)(b) to enter land,

the undertaker shall 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), (d) or (e), specifying the planned protective works proposed to be carried out, as listed in Schedule 11 (*Protective works*) to this Order. Such notice must contain a statement which notifies the recipient of his right under paragraph (6) to make a referral to arbitration.

(6) Where a notice is served under paragraph (5)(a), (d) or (e), the owner and or occupier of the building or land concerned may, by serving a counter-notice within the period of 14 days beginning with the day on which the notice was served, require any issue as to whether the protective works proposed by the undertaker are sufficient to fulfil their purpose, or it is necessary or expedient to

(2) 1964 c.40; there are amendments to section 57 that are not relevant to this Order.

(3) 1991 c.57

carry out the protective works or to enter the building or land to be referred to arbitration under article 63 (*arbitration*).

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

(8) Without prejudice to the power to undertake remedial works, under article 21 (*remedial works to buildings, or apparatus or equipment*), 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 authorised project carried out in the vicinity of the building first comes into 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 project,

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

(9) Nothing in this article shall relieve 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) shall 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 those works listed in Schedule 11 (*protective works*) and any other works the purpose of which is to prevent damage which may be caused to the building listed, which may include monitoring, underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused by the carrying out, maintenance or use of the authorised project.

(12) Without prejudice to the definition in article 2 (*interpretation*) the definition of “building” shall for the purposes of this article include those buildings, structures, apparatus and equipment listed in Schedule 11 (*protective works*).

(13) The undertaker may enter into an agreement or agreements in respect of protective works with any owner or occupier (with the requisite consent of the owner) of a building to which this article applies or of any other building likely to be affected by the authorised project and such agreement shall have the effect (as between those parties only) of regulating the powers in this article, insofar as they incorporate, add to, omit or modify the provisions of this article or any of them.

Remedial works to buildings, or apparatus or equipment

21.—(1) Save as otherwise agreed pursuant to article 21(14), subject to the following provisions of this article, the undertaker may at its own expense carry out remedial works to any land, building, apparatus or equipment which may be affected by the authorised project (whether or not within the Order limits), as the undertaker considers necessary or expedient.

(2) Remedial works may be carried out further to paragraph (1)—

- (a) at any time before or during the carrying out in the vicinity of the land or building of any part of the authorised project; or
- (b) after the completion of that part of the authorised project in the vicinity of the land or 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 project first comes into use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey—

- (a) any land or building falling within paragraph (1) and any land within the Order limits; and

(b) where reasonably necessary any land which is adjacent to the land or building but outside the Order limits.

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

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

(5) Before exercising—

- (a) a right under paragraph (1) to carry out remedial works to land or a building;
- (b) a right under paragraph (3)(a) to enter land or a building and land within the Order limits;
- (c) a right under paragraph 3(b) to enter land;
- (d) a right under paragraph (4)(a) to enter land or a building and land within the Order limits; or
- (e) 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), (d) or (e), together with any appropriate plans specifying the remedial works proposed to be carried out. Such notice must contain a statement which notifies the recipient of his right under paragraph (6) to make a referral to arbitration.

(6) Where a notice is served under paragraph (5)(a), (d) or (e), the owner and or occupier of the building or land concerned may, by serving a counter-notice within the period of 14 days beginning with the day on which the notice was served, require any issue as to whether the remedial works proposed by the undertaker are sufficient to fulfil their purpose, or it is necessary or expedient to carry out the remedial works or to enter the building or land to be referred to arbitration under article 63 (*arbitration*).

(7) The undertaker shall compensate the owners and occupiers of any building or land in relation to which 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) remedial works are carried out under this article to land or a building; and
- (b) within the period of 5 years beginning with the day on which the authorised project carried out in the vicinity of the land or building first comes into use it appears that the remedial works are inadequate to protect the land or building against damage caused by the carrying out or use of that part of the authorised project,

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

(9) Nothing in this article shall relieve 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) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “remedial works” in relation to land or a building means any monitoring or works the purpose of which is to remedy any damage which has been caused, or prevent any further damage which may be caused, by the carrying out, maintenance or use of the authorised project.

(12) Without prejudice to the definition in article 2 (*interpretation*) the definition of “building” shall for the purposes of this article include apparatus, equipment, or apparatus or equipment within any building.

(13) In this article “plans” means reasonable and appropriate documents demonstrating conclusion of the undertaker’s assessment that it is necessary or expedient to carry out the remedial works and that the remedial works proposed by the undertaker will be sufficient to fulfil their purpose.

(14) The undertaker may enter into an agreement or agreements in respect of remedial works with any owner or occupier (with the requisite consent of the owner) of a building to which this article applies or of any other building likely to be affected by the authorised project and such agreement shall have the effect (as between those parties only) of regulating the powers in this article, insofar as they incorporate, add to, omit or modify the provisions of this article or any of them.

Authority to survey and investigate the land

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

- (a) survey, monitor and or investigate the land;
- (b) without prejudice to the generality of (a), survey, monitor and or investigate the land and any buildings on that land for the purpose of investigating the potential effects of the authorised project on that land or buildings on that land or for enabling the construction, use and maintenance of the authorised project;
- (c) 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;
- (d) without prejudice to the generality of sub-paragraph (a), carry out ecological and or archaeological investigations or monitoring on such land; and
- (e) place on, leave on and remove from the land apparatus for use in connection with the survey, monitoring and or investigation of land, the making of trial holes, and or the carrying out of ecological and or archaeological investigations.

(2) This article also applies where an owner or occupier has requested the undertaker to enter his land for one or more of the purposes set out in (1).

(3) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land. Such notice must contain a statement which notifies the recipient of his right under paragraph (4) to make a referral to arbitration.

(4) Where a notice is served under paragraph (3), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 14 days beginning with the day on which the notice was served, require any issue as to whether the building or land needs to be surveyed or investigated to be referred to arbitration under article 63 (*arbitration*).

(5) Any person entering land under this article on behalf of the undertaker—

- (a) shall, if so required on 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, investigation, monitoring, or to make the trial holes.

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

- (a) in land located within the highway boundary without the consent of the highway authority (such consent shall not be unreasonably withheld); or
- (b) in a private street without the consent of the street authority (such consent shall not be unreasonably withheld); or
- (c) in a building without the consent of the owner and occupier.

(7) The undertaker shall 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.

(8) Unless the undertaker has taken temporary possession of the land pursuant to article 35 (temporary use of land for carrying out the authorised project), the undertaker shall (unless required by the owners of the land not to do so) remove all vehicles and equipment from and restore the land to the reasonable satisfaction of the owners as soon as reasonably practicable after completion of the survey, monitoring or investigation (as the case may be).

(9) The undertaker may not exercise the powers under this article after completion of construction.

Removal of human remains

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

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

(3) Before any such remains are removed from the specified land the undertaker shall 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 project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3) 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.

(6) Where a person has given notice under paragraph (5), 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 shall, 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 (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by a county court, and the court may make an order specifying who shall remove the remains and as to the payment of the costs of the application.

(8) The undertaker shall pay the reasonable expenses both of responding to notices under this article and of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

- (b) such notice is given and no application is made under paragraph (7) 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; or
- (c) within 56 days after any order is made by a county court under paragraph (7) 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 (10) the undertaker shall 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 shall be re-interred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) 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 shall comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation shall be sent by the undertaker to the Registrar General 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 (9) shall be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on a county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857⁽⁴⁾ (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.

(15) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950⁽⁵⁾ shall not apply to the authorised project.

(16) The undertaker may not exercise the powers under this article after completion of construction.

Cemex

24.—(1) The undertaker shall give not less than 2 months' written notice to the relevant planning authority, Cemex, and (if different) the landowner, prior to the commencement of development of Work No. 13b (ii) further to article 3 of this Order.

(2) If the undertaker has given notice under (1), then within 14 days of receipt by the relevant planning authority of that notice, it shall provide a counter notice in writing to the undertaker, providing details of—

- (a) any extant planning permission granted further to the 1990 Act, for the development set out at Schedule 1 to this Order as Work No. 13b (ii), or substantially the same development; and

(4) 1857 c.81. There are amendments to this Act which are not relevant to this Order.

(5) S.I. 1950/792

(b) the extent of discharge of the conditions attached to that planning permission.

(3) If following receipt of a notice under (2), the undertaker proposes to construct the development or substantially the same development as is set out in Schedule 1 to this Order as Work No. 13b (ii), then the undertaker shall, not less than 7 days prior to commencement of that development, give further notice in writing to the relevant planning authority confirming whether the development is being carried out further to this Order or further to the planning permission notified under (2), or both.

(4) If following the giving of notice under paragraph (3) the undertaker proposes to commence or continue the development to which the notice relates further to any authorisation not relied upon in that notice, the undertaker shall give further notice in writing to that effect to the relevant planning authority not less than 7 days prior to commencement or continuation of the development further to that authorisation.

Felling or lopping of trees

25.—(1) Save in respect of trees or shrubs which come within article 26 (*trees subject to tree preservation orders*), or article 27 (*trees in conservation areas*) the undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(4) The undertaker may not exercise the powers under this article after completion of construction.

Trees subject to tree preservation orders

26.—(1) The undertaker may fell or lop or cut back the roots of any tree or shrub which is subject to a tree preservation order with the prior approval of the relevant planning authority, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(5) The undertaker may not exercise the powers under this article after completion of construction.

Trees in conservation areas

27.—(1) Save in respect of trees or shrubs which come within article 26 (*trees subject to tree preservation orders*), the undertaker may fell or lop any tree or shrub which is situated within a

conservation area (designated under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990), or cut back its roots if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) Save for those trees identified on the approved plans, action may not be taken under paragraph (1) unless the undertaker has given written notice to the relevant planning authority of the intended action (with sufficient particulars to identify the tree), and either—

- (a) the relevant planning authority has indicated in writing that it has no objection to the works or that they fall within an exemption in paragraph (3) or (4), or
- (b) six weeks have elapsed from the date of the notice and a tree preservation order has not been made in respect of the tree or shrub.

(3) Paragraph (2) shall not apply where consent would not be needed for the proposed action if the tree or shrub were subject to a tree preservation order.

(4) Paragraph (2) shall not apply to any action which would be exempt in accordance with regulations under section 212 of the 1990 Act (disapplication of tree preservation offences).

(5) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 213(1) of the 1990 Act (replacement of trees) shall not apply.

(6) The authority given by paragraph (1) shall constitute an authorisation by an order granting development consent for the purposes of section 211(1A) of the 1990 Act.

(7) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(8) The undertaker may not exercise the powers under this article after completion of construction.