
STATUTORY INSTRUMENTS

2020 No. 1099

**The Southampton to London Pipeline
Development Consent Order 2020**

PART 6

MISCELLANEOUS AND GENERAL

Disapplication of legislative provisions

36.—(1) The following provisions do not apply in relation to the construction of any works or the carrying out of any operation required for the purpose of, or in connection with, the construction or maintenance of any part of the authorised development—

- (a) the provisions of any byelaws made under, or having effect as if made under Schedule 25 (byelaw-making powers of the Authority) to the Water Resources Act 1991⁽¹⁾;
- (b) regulation 12 (requirement for an environmental permit) of the 2016 regulations⁽²⁾ in respect of a flood risk activity;
- (c) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991⁽³⁾;
- (d) section 32 (variation of awards) of the Land Drainage Act 1991;
- (e) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991;
- (f) the provisions of the Basingstoke Canal Act 1778⁽⁴⁾ and the Basingstoke Canal Act 1793⁽⁵⁾;
- (g) section 5 (control of grass verges, etc.) and section 13 (excavations near highways) of the Surrey Act 1985⁽⁶⁾;
- (h) section 18 (open spaces and verges, etc., of housing estates), section 22 (prohibition of parking or camping on highway verges, etc.), section 28 (control of goods service areas) and section 34 (excavations near highways) of the Hampshire County Council Act 1972⁽⁷⁾;
- (i) byelaw 3 (overnight parking), byelaw 7 (erection of structures), byelaw 9 (fires), byelaws 18 and 19 (protection of flower beds, trees, grass, etc), byelaw 20 (removal of substances), byelaw 27(b) (pollution of waterways), byelaw 27(c) (watercourses), byelaw 36 (metal detectors), byelaw 37(1) (fishing and protection of wildlife), byelaw 41 (gates) and byelaw

(1) 1991 c. 7.
(2) S.I. 2016/1154.
(3) 1991 c. 59.
(4) 1778 c. lxxv .
(5) 1793 c. xvi.
(6) 1985 c. iii.
(7) 1972 c. xlvii

- 42(c) (obstruction) of the Rushmoor Borough Council Pleasure Grounds, Public Walks and Open Spaces Byelaws 2001;
- (j) byelaw 4 (use of motorcycles, etc) of the Rushmoor Borough Council Byelaws for Good Rule and Government 2001;
- (k) byelaw 3(i), byelaw 6, byelaw 8(i), byelaw 9, byelaw 14(ii) and byelaw 15 of the Byelaws made under sections 12 and 15 of the Open Spaces Act 1906 by the Council of the Borough of Rushmoor with respect to Southwood Golf Course Farnborough in Hampshire 1983;
- (l) byelaw 3 (opening times), byelaw 4(2) (protection of structures and plants), byelaw 5 (unauthorised erection of structures), byelaw 8 (protection of wildlife), byelaw 9 (gates), byelaw 11(1) (fires), byelaw 26 (pollution) and byelaw 32(c) (obstruction) of the Spelthorne Borough Council Byelaws for Pleasure Grounds, Public Walks and Open Spaces 2009;
- (m) byelaw 2 (opening times), byelaw 4 (overnight parking), byelaw 9 (erection of structures), byelaws 16 and 17 (protection of flower beds, trees, grass, etc), byelaw 18 (removal of substances), byelaw 32(b) (pollution of waterways), byelaw 32(c) (watercourses), byelaw 39 (metal detectors), byelaw 40(1) (fires), byelaw 42(1) (fishing and protection of wildlife); byelaw 46 (gates) and byelaw 47(c) (obstruction) of the Runnymede Borough Council Byelaws for Pleasure Grounds, Public Walks and Open Spaces 1997;
- (n) byelaw 6 (obstruction to flow), byelaw 8(2) (notice to remove growth in or on banks and river control works) and byelaw 17 (deposit on banks etc) of the Environment Agency Southern Region Land Drainage and Sea Defence Byelaws 1982 (as amended); and
- (o) byelaw 4 (control of structures, pipes and cables), byelaw 5 (control of excavations and removal of turf, etc.), byelaw 6 (Control of dredging and removal of shingle etc.), byelaw 7 (endangering stability of the bank), byelaw 8 (interference with banks etc.), byelaw 9 (deposit of material on banks), byelaw 13 (obstruction to flow), byelaw 14 (planting of trees etc.), byelaw 16 (obstruction of areas liable to flood) and byelaw 17 (river control works) of the Thames Region Land Drainage Byelaws 1981 (as amended).

(2) The provisions of the Neighbourhood Planning Act 2017⁽⁸⁾, insofar as they relate to temporary possession of land under article 30 (temporary use of land for carrying out the authorised development) and article 31 (temporary use of land for maintaining the authorised development) of this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 31(12) (temporary use of land for maintaining the authorised development) any maintenance of any part of the authorised development.

(3) Notwithstanding the provisions of section 208 of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010⁽⁹⁾ any building comprised in the authorised development must be deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

Removal of human remains

37.—(1) In this article “the specified land” means the land within the Order limits which the undertaker reasonably considers may contain human remains.

(2) Before the undertaker carries out any development or works within the Order limits which will or may disturb any human remains in the specified land it must remove those human remains

⁽⁸⁾ 2017 c. 20.

⁽⁹⁾ S.I. 2010/948. Regulation 6 was amended by S.I. 2011/987.

from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Subjection to paragraph (12), before any such remains are removed from the specified land the undertaker must 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 specified land; 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 must 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 must, 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 is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses 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 the 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 must 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 must be reinterred in individual containers which must 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 must 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 is to 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) is to be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).
- (12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—
- (a) that the remains were interred more than 100 years ago; and
 - (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.
- (13) In this article—
- (a) references to a relative of the deceased are to a person who—
 - (i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
 - (ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased.
 - (b) references to a personal representative of the deceased are to a person who—
 - (i) is the lawful executor or executrix of the estate of the deceased; or
 - (ii) is the lawful administrator of the estate of the deceased.
- (14) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.
- (15) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.
- (16) Section 25 (offence of removal of body from burial ground)(**10**) of the Burial Act 1857 does not apply to a removal carried out in accordance with this article.
- (17) Section 239 (use and development of burial grounds) of the 1990 Act applies—
- (a) in relation to land, other than a right over land, acquired for the purposes of the authorised development (whether or not by agreement), so as to permit use by the undertaker in accordance with the provisions of this Order; and
 - (b) in relation to a right over land so acquired (whether or not by agreement), or the temporary use of land pursuant to articles 30 (temporary use of land for constructing the authorised development) or 31 (temporary use of land for maintaining the authorised development), so as to permit the exercise of that right or the temporary use by the undertaker in accordance with the provisions of this Order,
- and in section 240(1) (provisions supplemental to ss.238 and 239) of the 1990 Act reference to “regulations made for the purposes of sections 238(3) and (4) and 239(2)” means, so far as applicable to land or a right over land acquired under this Order, paragraphs (2) to (15) of this article and in section 240(3) of the 1990 Act reference to a “statutory undertaker” includes the undertaker and reference to “any other enactment” includes this Order.
- (18) The Town and Country Planning (Churches, Places of Worship and Burial Ground) Regulations 1950(**11**) do not apply to the authorised development.

(10) 1857 c. 81.

(11) S.I. 1950/792.

Application of landlord and tenant law

38.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the Town and Country Planning Act 1990

39. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land).

Planning permission

40. If planning permission is issued under the 1990 Act for development any part of which is within the Order limits following the publication of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; and
- (b) required to complete or enable the construction, use or operation of the development authorised by this Order,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

Defence to proceedings in respect of statutory nuisance

41.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹²⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) (noise emitted from premises so as to be prejudicial to health or a nuisance) of section 79(1) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—

(12) 1990 c. 43.

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(13); or
 - (ii) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with the controls and measures relating to noise as described in the code of construction practice or the construction environment management plan approved under Schedule 2 (Requirements) or in accordance with the noise levels set out in an environmental permit relating to the operation of the authorised development;
 - (iii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
 - (iv) is a consequence of complying with a requirement of this Order and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.
- (2) For the purposes of paragraph (1) above, compliance with the controls and measures relating to noise described in the code of construction practice and the CEMP will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.
- (3) Where a relevant planning authority is acting in accordance with section 60(4) and section 61(4) of the Control of Pollution Act 1974 in relation to the construction of the authorised development then the local authority must also have regard to the controls and measures relating to noise referred to in the code of construction practice or the CEMP approved under Schedule 2 (Requirements).
- (4) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.
- (5) In this article “premises” has the same meaning as in section 79 of the Environmental Protection Act 1990(14).

Felling or lopping

42.—(1) The undertaker may fell, lop, prune, coppice, pollard or reduce in height or width, any tree or shrub within or overhanging land within the Order limits, or may cut back the roots of a tree or shrub which extend into the Order land if it reasonably believes it to be necessary to do so to prevent the tree, shrub or roots from—

- (a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) constituting a danger to persons using the authorised development.

(13) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to this Order.

(14) 1990 c. 43.

(2) In carrying out any activity authorised by paragraph (1) or (3), the undertaker must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person who sustains any loss or damage arising from such activity for that loss or damage.

(3) The undertaker may, for the purpose of the authorised development—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development; and
- (b) only remove important hedgerows identified in Schedule 10 (Removal of important hedgerows) to the extent shown on the plans identified in Schedule 10.

(4) The power conferred by paragraph (3) removes any obligation upon the undertaker to secure any consent under the Hedgerows Regulations 1997⁽¹⁵⁾ in undertaking works pursuant to paragraph 3(a) or (b).

(5) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(6) In this article "hedgerow" and "important hedgerow" have the meaning given in the Hedgerow Regulations 1997.

Trees subject to Tree Preservation Orders

43.—(1) The undertaker may fell, lop or prune any part of any tree which is within, over or under land within the Order limits and which is described in Schedule 8 (trees subject to Tree Preservation Orders) and identified on the general arrangement plans, or cut back its roots, if it reasonably believes it to be necessary in order to prevent the tree—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

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

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any damage arising from such activity; and
- (b) the duty in section 206(1) of the 1990 Act (replacement of trees) must not apply.

(3) The authority given by paragraph (1) constitutes 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, must be determined under Part 1 of the 1961 Act.

Protection of interests

44. Schedule 9 (protective provisions) to the Order has effect.

Certification of documents, etc.

45.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents set out in Schedule 11 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

⁽¹⁵⁾ S.I. 1997/1160, amended by section 73(2) of the Countryside and Rights of Way Act 2000 (c.37), S.I. 2003/2155, S.I. 2006/1177, S.I. 2009/1307, S.I. 2013/755 and S.I. 2015/377.

(2) Where any plan or document set out in Schedule 11 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

46.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to services by post) of the Interpretation Act 1978⁽¹⁶⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

(16) 1978 c. 30.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article will not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

No double recovery

47. Compensation must not be payable in respect of the same matter both under this Order and under any other enactment, any contract or deed or any rule of law, or under two or more different provisions of this Order.

Arbitration

48. Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the Lands Chamber of the Upper Tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.