
STATUTORY INSTRUMENTS

2023 No. 778

The Boston Alternative Energy Facility Order 2023

PART 4

SUPPLEMENTARY POWERS

Authority to survey and investigate the land

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

- (a) survey or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);
- (b) without limitation to the scope of sub-paragraph (a), make any excavations, trial holes, boreholes and other investigations in such positions on the land as the undertaker thinks fit to investigate the extent or the nature of the surface layer, subsoil, ground water, underground structures, foundations, and plant or apparatus and remove soil and water samples and discharge water from sampling operations on to the land;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
- (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 boreholes.

(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' notice has been served on every owner and occupier of the land, such notice must indicate the nature of the survey or investigation that the undertaker intends to carry out.

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

- (a) must, if so required before or after entering the land, produce written evidence of their 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 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 or delayed.

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

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(1) The functions of the Lands Tribunal under the 1961 Act are transferred to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 (c. 15).