
STATUTORY INSTRUMENTS

2020 No. 474

The Lake Lothing (Lowestoft) Third Crossing Order 2020

PART 2

WORKS PROVISIONS

Supplemental powers

Discharge of water

15.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse, 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 under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991 ^{M1}.

(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, but must not be unreasonably withheld or delayed.

(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 or delayed; and
- (b) where that person has been given opportunity to supervise the making of the opening.

(5) The undertaker must 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, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, a local authority, or a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991, have the same meaning as in that Act.

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

Commencement Information

II Art. 15 in force at 21.5.2020, see [art. 1](#)

Marginal Citations

M1 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the [Competition and Service \(Utilities\) Act 1992](#) (c. 43), [sections 36\(2\)](#) and 99 of the [Water Act 2003](#) (c. 37) and paragraph 16(1) of Schedule 3 to the [Flood and Water Management Act 2010](#) (c. 29).

Protective works to buildings

16.—(1) Subject to the following provisions of this article, the undertaker may at the undertaker's own expense carry out such protective works to any building lying within the Order limits or which may be affected by the authorised development 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 the completion of that part of the authorised development in the vicinity of the 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 development is first opened for use.

(3) Subject to paragraph (5) for the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey—

- (a) any building falling within paragraph (1) and any land within its curtilage; and
- (b) where necessary or expedient, land which is adjacent to the building falling within paragraph (1) but outside its curtilage (whether or not such adjacent land is inside or outside the Order limits),

and place on, leave on and remove from the land monitoring apparatus.

(4) For the purpose of carrying out protective works to a building under this article 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 (whether or not such adjacent land is inside or outside the Order limits) but not any building erected on it,

and if it is reasonably required, the undertaker may enter and take possession, or exclusive possession, of the building and land or any part thereof for the purpose of carrying out the protective works.

(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) or land;
- (c) a right under paragraph (4)(a) to enter and take possession of a building (and land within its curtilage); or
- (d) a right under paragraph (4)(b) to enter and take possession of 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 that 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) 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 of 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 62 (arbitration).

(7) The undertaker must 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) 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) Without affecting article 40 (no double recovery), nothing in this article relieves the undertaker from any liability to pay compensation under section 152 ^{M2} (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Section 13 ^{M3} (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 ^{M4} (application of compulsory acquisition provisions) of the 2008 Act.

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

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

- (a) 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 use of the authorised development;
- (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; and
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk to such operation being disrupted.

Commencement Information

I2 Art. 16 in force at 21.5.2020, see [art. 1](#)

Marginal Citations

M2 [Section 152](#) was amended by [S.I. 2009/1307](#).

M3 [Section 13](#) was amended by sections 62(3) and 139(4) to (9) of, paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 223 to, the [Tribunals, Courts and Enforcement Act 2007](#) (c. 15).

M4 [Section 125](#) was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

Authority to survey and investigate land

17.—(1) The undertaker may for the purposes of this Order enter on—

- (a) any land shown within the Order limits; and
- (b) where reasonably necessary, any land which is adjacent to but outside the Order limits, and—
 - (i) survey or investigate the land;
 - (ii) without limitation to the scope of paragraph (i), make any excavations or trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (iii) without limitation to the scope of paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
 - (iv) 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.
- (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.
- (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 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 powers 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.
- (6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under 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.

Commencement Information

I3 Art. 17 in force at 21.5.2020, see [art. 1](#)

Felling or lopping of trees

- 18.**—(1) The undertaker may fell or lop any tree—or shrub within or overhanging land within the Order limits, or cut back its roots, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—
- (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), the undertaker must do no unnecessary damage to any tree or shrub and must 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, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Commencement Information

14 Art. 18 in force at 21.5.2020, see [art. 1](#)

Trees subject to tree preservation orders

19.—(1) The undertaker may fell or lop any tree described in Schedule 5 (trees subject to tree preservation orders) and shown on the tree preservation order trees location plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (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 passengers or other 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 loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to 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, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Commencement Information

15 Art. 19 in force at 21.5.2020, see [art. 1](#)

Temporary suspension of navigation within Lake Lothing in connection with the authorised development

20.—(1) Regardless of any other enactment or in any rule of law, the undertaker may, with the consent of the harbour authority (such consent not to be unreasonably withheld)—

- (a) temporarily close; or
- (b) temporarily restrict the passage of vessels in any way in,

any part of Lake Lothing within the Order limits that the undertaker deems necessary or expedient for the purposes of constructing, inspecting or maintaining the new bridge.

(2) In exercise of the powers conferred by paragraph (1)—

- (a) the undertaker must execute such works or do such things as may be required to ensure that at any time no more of that part of Lake Lothing which is within the Order limits is closed than is reasonably necessary in all the circumstances; and
- (b) should it be necessary at any time to close that part of Lake Lothing which is within the Order limits to navigation, the undertaker must use its best endeavours to ensure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use Lake Lothing.
- (3) Following receipt of the harbour authority's consent under paragraph (1) to any proposed closure or restriction but subject to paragraph (5), no later than three months before the date when a closure or restriction is due to commence the undertaker must—
- (a) inform the PMSC Stakeholder Group and the operators of all marinas located on Lake Lothing of the nature of the proposals including when they are intended to take effect and their anticipated duration; and
- (b) take such steps as it considers appropriate in the circumstances, in consultation with the harbour authority, to publicise the nature of the proposals including when they are intended to take effect and their anticipated duration.
- (4) Paragraph (3) does not apply in the case of an emergency, or in any case where a proposed closure or restriction is intended to last for 48 hours or less, in which case the undertaker must in consultation with the harbour authority take such steps as it considers practicable in the circumstances to inform persons of, and to publicise, the nature and anticipated duration of the proposed closure or restriction.
- (5) As soon as reasonably practicable after the undertaker has complied with paragraph (3), the harbour authority must issue a notice to mariners giving the commencement date and other particulars of the temporary closure or restriction concerned.
- (6) Except in an emergency, a master of a vessel must not allow a vessel to enter into any part of Lake Lothing within the Order limits that has been temporarily closed or subject to temporary restrictions under this article without first obtaining the consent of the undertaker which may attach reasonable conditions to any consent.
- (7) Before granting consent under paragraph (6), the undertaker must consult with the harbour master.

Commencement Information

I6 Art. 20 in force at 21.5.2020, see [art. 1](#)

Removal of vessels

21.—(1) If it appears to the undertaker necessary or convenient to do so for the purposes of the construction or maintenance of the authorised development it may, with the consent of the harbour authority (such consent not to be unreasonably withheld), remove from within the Order limits, any vessel that is—

- (a) sunk, stranded or abandoned; or
- (b) moored or laid up (whether lawfully or not),

and relocate it to such place outside the Order limits (and if that is elsewhere within Lowestoft Harbour, to such place as is agreed by the harbour master) where it may without injury to the vessel be moored or laid.

(2) Before exercising the powers conferred by paragraph (1), the undertaker must take such steps as it considers appropriate in the circumstances, in consultation with the harbour authority, to publish and display notices setting out—

- (a) the reason for requiring removal of any vessel from within that part of the limits of dredging specified in the notice; and
- (b) the date by which the vessel specified in the notice must be removed from that part of Lake Lothing within the Order limits also specified in the notice.

(3) If the owner or master of any vessel within the Order limits does not remove that vessel from within the part of the Order limits specified in the notice before the date specified in accordance with paragraph (2)(b) the undertaker may, having first obtained consent from the harbour authority, cause that vessel to be removed.

(4) Paragraph (2) does not apply in the case of an emergency, when the undertaker must in consultation with the harbour master take such steps as it considers practicable in the circumstances to inform persons of the proposed removal of any vessel from any part of Lake Lothing within the Order limits.

(5) The undertaker may recover as a debt from the owner of any vessel removed pursuant to paragraph (3) all expenses incurred by the undertaker in respect of its removal.

Commencement Information

I7 Art. 21 in force at 21.5.2020, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Lake Lothing (Lowestoft) Third Crossing Order 2020, Cross Heading: Supplemental powers.