
STATUTORY INSTRUMENTS

2020 No. 474

The Lake Lothing (Lowestoft) Third Crossing Order 2020

PART 5

MISCELLANEOUS AND GENERAL

Benefit of Order

48.—(1) Subject to article 49 (transfer of benefit of Order, etc.) and paragraph (2), the provisions of this Order conferring functions on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express protection, benefit or accommodation of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Commencement Information

II Art. 48 in force at 21.5.2020, see [art. 1](#)

Transfer of benefit of Order, etc.

49.—(1) The undertaker may, with the consent of the Secretary of the State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order that apply to the [^{F1}undertaker]; and such statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the grantee”) for a period agreed between the undertaker and the grantee any or all of the benefit of the provisions of this Order that apply to the undertaker and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in the provisions of this Order that apply to the undertaker must include references to the transferee or the grantee, as the case may be.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State under this article is not required where the transfer of any provisions of this Order is to be made between the undertaker and the harbour authority or the harbour master.

(5) The undertaker must notify the MMO of any transfer of benefit made by the undertaker under this article.

(6) Before giving consent under this article to any transfer or grant under paragraph (1), the Secretary of State must consult Cadent and any other party as the Secretary of State considers appropriate.

F1 Word in [art. 49\(1\)\(a\)](#) substituted (22.10.2020) by [The Lake Lothing \(Lowestoft\) Third Crossing \(Correction\) Order 2020 \(S.I. 2020/1158\)](#), arts. 1, **2(6)**

Commencement Information

I2 Art. 49 in force at 21.5.2020, see [art. 1](#)

Planning permission

50. If planning permission is granted under the 1990 Act after this Order comes into force for development partly or wholly within the Order limits and which is not—

- (a) itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the authorised development,

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

Commencement Information

I3 Art. 50 in force at 21.5.2020, see [art. 1](#)

Saving for undertaker's highway and planning functions

51. Except as expressly provided, nothing in this Order is to prejudice the rights, powers and duties of the undertaker under the 1980 Act, the 1990 Act and the 1991 Act in relation to the highways constructed as part of the authorised development.

Commencement Information

I4 Art. 51 in force at 21.5.2020, see [art. 1](#)

Application of landlord and tenant law

52.—(1) This article applies to any agreement entered into by the undertaker under article 49 (transfer of benefit of Order, etc.) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(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.

Commencement Information

I5 Art. 52 in force at 21.5.2020, see [art. 1](#)

Traffic regulation measures

53.—(1) Subject to the provisions of this article, the undertaker may, for the purposes of the authorised development—

- (a) make provision, in respect of those roads specified in column (2) of Part 1 (speed limits and restricted roads) of Schedule 11 (traffic regulation measures), as to the speed limit and restricted road status of those roads as specified in column (3) of that Part of that Schedule;
- (b) make provision, in respect of those roads specified in column (2) of Part 2 (traffic regulation measures (clearways and prohibitions)) of Schedule 11, as to the permitting, prohibition or restriction of the stopping, waiting, parking, loading or unloading of vehicles as specified in column (3) of that Part of that Schedule;
- (c) make provision, in respect of those roads specified in column (2) of Part 3 (revocations and variations of existing traffic regulation orders) of Schedule 11, as to prescribed routes to apply to those roads as specified in column (3) of that Part of that Schedule;
- (d) in respect of those roads specified in column (2) of Part 3 of Schedule 11, revoke or vary the orders specified in column (3) of that Part of that Schedule in the manner specified in column (4) of that Part of that Schedule; and
- (e) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.

(2) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011^{M1} when used in accordance with regulation 3(5) of those regulations.

(3) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) as to the speed at which vehicles may proceed along any road;
- (c) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (d) authorise the use as a parking place of any road;
- (e) make provision as to the direction or priority of vehicular traffic on any road; and
- (f) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(4) The power conferred by paragraph (3) may be exercised at any time prior to the expiry of 24 months from the opening of the new bridge for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (3) may have effect both before and after the expiry of that period.

(5) The undertaker must not exercise the powers conferred by paragraph (1) or (3) unless the undertaker has—

(a) given not less than—

- (i) 12 weeks' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
- (ii) 14 days' notice in writing of the undertaker's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated and that notice must include the time periods within which the traffic authority may specify the manner in which, under sub-paragraph (b), the undertaker must advertise its intention to exercise the powers conferred by paragraph (1) or (3); and

(b) advertised the undertaker's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i) or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (3)—

(a) has effect as if duly made by, as the case may be—

- (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
- (ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking spaces) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject;

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.

(c) must be advertised in the same manner as the undertaker's intention to make the prohibition, restriction or other provision was under paragraph (5)(b).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker by subsequent exercise of the powers conferred by paragraph (1) or (3) within a period of 24 months from the opening of the new bridge for public use.

(8) Before exercising the powers conferred by paragraphs (1) or (3) the undertaker must consult such persons as the undertaker considers necessary and appropriate and have regard to the representations made to the undertaker by any such person.

(9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

Commencement Information

I6 Art. 53 in force at 21.5.2020, see **art. 1**

Marginal Citations

M1 S.I. 2011/935.

Clearways

54.—(1) From such day as the undertaker may determine, except as provided in paragraph (2) below no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 2 (traffic regulation measures (clearways and prohibitions)) of Schedule 11 (traffic regulation measures) where it is identified that such lengths of road are to become a clearway in the corresponding row of column (3) of that Part, except upon the direction of, or with the permission of, a uniformed constable or uniformed traffic officer.

(2) Nothing in paragraph (1) applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance, improvement, reconstruction or operation of the road;

(iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity, or any electronic communications apparatus as defined in Schedule 3A (the Electronic Communications Code) to the Communications Act 2003 ^{M2}; or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

(i) for police, ambulance, fire and rescue authority or traffic officer purposes;

(ii) in the service of a local authority, safety camera partnership or Drive and Vehicle Standards Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991 ^{M3}; or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000 ^{M4}; or

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person's control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the 2004 Act.

Commencement Information

I7 Art. 54 in force at 21.5.2020, see [art. 1](#)

Marginal Citations

- M2** 2003 c. 21. Schedule 3A was inserted by section 4 of, and Schedule 1 to, the [Digital Economy Act 2017](#) (c. 30).
M3 1991 c. 56.
M4 2000 c. 26.

Deemed marine licence

55. The undertaker is granted a deemed marine licence under Part 4 (marine licensing) of the 2009 Act to carry out the activities specified in Part 1 of Schedule 12 (deemed marine licence), subject to the conditions set out in Parts 2 to 4 of that Schedule.

Commencement Information

- I8** Art. 55 in force at 21.5.2020, see [art. 1](#)

Defence to proceedings in respect of statutory nuisance

56.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisance) of the Environmental Protection Act 1990 ^{M5} in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) 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—
- (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 sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 ^{M6}; or
 - (ii) is a consequence of the construction or maintenance of the authorised development 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 be avoided.

(2) Section 61(9) 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.

Commencement Information

- I9** Art. 56 in force at 21.5.2020, see [art. 1](#)

Marginal Citations

- M5** 1990 c. 43. There are amendments to section 82(1) which are not relevant to this Order.
M6 1974 c. 40. Section 61(9) was amended by paragraph 15(3) of Schedule 14 to the [Environmental Protection Act 1990](#) (c. 43) and by Schedule 24 to the [Environment Act 1995](#) (c. 25). There are other amendments to section 61 which are not relevant to this Order.

Crown rights

57.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of any interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent given under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Commencement Information

I10 Art. 57 in force at 21.5.2020, see [art. 1](#)

Protective provisions

58. Schedule 13 (protective provisions) has effect.

Commencement Information

I11 Art. 58 in force at 21.5.2020, see [art. 1](#)

Saving for Trinity House

59. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Commencement Information

I12 Art. 59 in force at 21.5.2020, see [art. 1](#)

Certification of documents

60.—(1) As soon as practicable after the making of this Order, the undertaker must submit copies of each of the plans and documents identified in Schedule 14 (documents to be certified) must be certified by the Secretary of State as true copies of those documents.

(2) Where any document identified in Schedule 14 requires to be amended to reflect the terms of the Secretary of State's decision to make this Order, that document in the form amended to the Secretary of State's satisfaction is the version of the document required to be certified under paragraph (1).

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

(4) The undertaker must, following certification of the plans and documents in accordance with paragraph (1) make those plans and documents available in electronic form for inspection by members of the public.

Commencement Information

I13 Art. 60 in force at 21.5.2020, see [art. 1](#)

Service of notices

61.—(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 (6) to (9) by electronic transmission.

(2) Subject to paragraph (3), 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) Notices to the harbour authority served by the methods set out in paragraph 1(a) or (b) must be served to the following locations—

- (a) Associated British Ports, 25 Bedford Street, London WC2E 9ES; and
- (b) Port of Lowestoft, North Quay Cargo Terminal, Commercial Road, Lowestoft, NR32 2TE.

(4) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^{M7} 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.

(5) 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.

(6) 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 is 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.

(7) 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 must provide such a copy as soon as reasonably practicable.

(8) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (9).

(9) 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 is final and takes 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.

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

(11) 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.

Commencement Information

I14 Art. 61 in force at 21.5.2020, see [art. 1](#)

Marginal Citations

M7 1978 c. 30.

Arbitration

62.—(1) 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 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 President of the Institution of Civil Engineers.

(2) Subject to any other provision of this Order, any arbitration to be undertaken under paragraph (1) must be carried out using the same process as is set out in sub-paragraphs (2)(d) to (f), (4) to (8) and (12) of paragraph 19 of Schedule 2 subject to the modifications set out in paragraph (3).

(3) The modifications referred to in paragraph (2) are that references in those provisions of Schedule 2 to each of the terms set out in column (1) of the following table are replaced by the corresponding term in column (2) of the table—

<i>(1)</i>	<i>(2)</i>
the adjudicator	the arbitrator appointed under article 62(1)
the appeal	the difference referred to arbitration
the discharging authority	the person or body with whom the difference with the undertaker referred to arbitration exists

Commencement Information

I15 Art. 62 in force at 21.5.2020, see [art. 1](#)

Consents, agreements, certifications and approvals

63.—(1) Where any application is made to a relevant authority, the consent, agreement or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was received, the relevant authority is deemed to have given its consent, certification, agreement or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) In this article—

“application” means an application or request for any consent, agreement or approval required or contemplated by articles 6 (street works), 8 (construction and maintenance of new, altered or diverted streets), 11 (temporary stopping up and restriction of use of streets), 12 (access to works), 15 (discharge of water), 17 (authority to survey and investigate land) and 53 (traffic regulation measures); and

“relevant authority” means a planning authority, a traffic authority, a highway authority or a street authority.

Commencement Information

I16 Art. 63 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, PART 5.