
STATUTORY INSTRUMENTS

2022 No. 573

The M25 Junction 28 Development Consent Order 2022

PART 6

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

41.—(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 such enactment or rule of law applies 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

11 Art. 41 in force at 6.6.2022, see [art. 1](#)

Operational land for purposes of the 1990 Act

42. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

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Commencement Information

I2 Art. 42 in force at 6.6.2022, see [art. 1](#)

Defence to proceedings in respect of statutory nuisance

43.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(1) 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)(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 site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(3); 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 reasonably be avoided.

(2) Section 61(9)(4) (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.

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Commencement Information

I3 Art. 43 in force at 6.6.2022, see [art. 1](#)

Protection of interests

44. Schedule 9 (protective provisions) has effect.

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Commencement Information

I4 Art. 44 in force at 6.6.2022, see [art. 1](#)

(1) [1990 c. 43](#). There are amendments to this subsection which are not relevant to this Order.

(2) Subsection (2) of section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There are other amendments to this subsection which are not relevant to this Order.

(3) [1974 c. 40](#). Section 61(9) was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 3 to, the Environmental Protection Act 1990. There are other amendments to section 61 which are not relevant to this Order.

(4) Section 61(9) was amended by section 162 of, and paragraph 15(1) and (3) of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to this subsection which are not relevant to this Order.

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 10 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 10 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 is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Commencement Information

I5 Art. 45 in force at 6.6.2022, see [art. 1](#)

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 service by post) of the Interpretation Act 1978(5) 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.

(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 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.

(9) This article does not 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.

Commencement Information

I6 Art. 46 in force at 6.6.2022, see [art. 1](#)

Disapplication of legislative provisions

47.—(1) The following provisions 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 or maintenance of the authorised development—

- (a) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016⁽⁶⁾ in relation to the carrying on of a flood risk activity;
- (b) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991⁽⁷⁾;
- (c) section 30⁽⁸⁾ (authorisation of drainage works in connection with a ditch) of the Land Drainage Act 1991;
- (d) section 32⁽⁹⁾ (variation of awards) of the Land Drainage Act 1991;
- (e) the provisions of any byelaws made under section 66⁽¹⁰⁾ (powers to make byelaws) of the Land Drainage Act 1991; and

⁽⁶⁾ [S.I. 2016/1154](#) as amended by [S.I. 2017/1012](#), [S.I. 2017/1075](#), [S.I. 2018/110](#), [S.I. 2018/428](#) and [S.I. 2018/757](#).

⁽⁷⁾ [1991 c. 59](#). Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995, paragraphs 25 and 32 to the Flood and Water Management Act 2010 and [S.I. 2013/755](#).

⁽⁸⁾ Section 30 was amended by [S.I. 2013/1036](#).

⁽⁹⁾ Section 32 was amended by [S.I. 2013/755](#).

⁽¹⁰⁾ Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act [2014 \(c. 21\)](#).

- (f) the provisions of any byelaws made under, or having effect as if made under, paragraph 5, 6 or 6A of Schedule 25 (byelaw-making powers of the appropriate agency) to the Water Resources Act 1991(11).

(2) In paragraph (1)(a) “flood risk activity” has the meaning given in paragraph 3(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016.

(3) The provisions of the Neighbourhood Planning Act 2017(12), insofar as they relate to temporary possession of land under articles 34 (temporary use of land for carrying out the authorised development) and 35 (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 35(13), any maintenance of any part of the authorised development.

(4) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of “development”) of the Community Infrastructure Levy Regulations 2010(13) any building comprised in the authorised development is 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.

Commencement Information

I7 Art. 47 in force at 6.6.2022, see [art. 1](#)

Amendment of local legislation

48.—(1) The following local enactments and local byelaws, and any byelaws or other provisions made under any of those enactments or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order—

- (a) sections 20, 22, 25 of the Hornchurch, Romford and Havering Inclosures Act 1811(14);
(b) section 25 of the Great Warley and Shenfield (Essex) Inclosure Act 1838(15);
(c) sections 13 and 15 of the South Essex Waterworks Act 1861(16);
(d) section 53 of the Brentwood Gas Act 1905(17);
(e) sections 41 and 44 of the London County Council (General Powers) Act 1907(18);
(f) section 15 of the British Transport Commission Act 1952(19);
(g) sections 7 and 11 of the Essex River and South Essex Water Act 1969(20);

(11) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(12) 2017 c. 20.

(13) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments which are not relevant to this Order.

(14) 1811 c. clxxxvii.

(15) 1838 c. 20.

(16) 1861 c. cxxxvii.

(17) 1905 c. lix.

(18) 1907 c. clxxv.

(19) 1952 c. xxxiv.

(20) 1969 c. xlix.

- (h) sections 6 and 8 of the Essex Act 1987(21);
 - (i) byelaws of the Rural District Council of Romford as to the nuisances in connection with the removal of offensive noxious matters 1899;
 - (j) byelaws of the Rural District Council of Romford with respect to the Drainage of Buildings 1908;
 - (k) byelaw 4 of the Essex County Council byelaws for the Good Rule and Government 1938;
 - (l) byelaws 4, 6 and 7 of the Urban District of Hornchurch byelaws for Nuisances 1938;
 - (m) byelaws of the Urban District Council of Hornchurch as to removal through streets of offensive or noxious matter or liquid 1938; and
 - (n) byelaws 4, 6, 7, 9, 14, 16 and 17 of the Thames Region Land Drainage Byelaws 1981.
- (2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order to the extent that—
- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
 - (b) action taken in pursuance of the power would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
 - (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.
- (3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and in any event within 14 days of receipt of the notice, respond in writing setting out—
- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;
 - (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
 - (c) the extent of that exclusion.

Commencement Information

18 Art. 48 in force at 6.6.2022, see [art. 1](#)

No double recovery

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

Commencement Information

19 Art. 49 in force at 6.6.2022, see [art. 1](#)

Disregard of certain improvements etc.

50.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works carried out or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

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Commencement Information

I10 Art. 50 in force at 6.6.2022, see [art. 1](#)

Set off for enhancement in value of retained land

51.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 28 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

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Commencement Information

I11 Art. 51 in force at 6.6.2022, see [art. 1](#)

Appeals relating to the Control of Pollution Act 1974

52.—(1) Except as otherwise provided in this Order, the undertaker may appeal in the event that a local authority issues a notice under section 60 (control of noise on construction sites), or does not

give consent or grants consent but subject to conditions, under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(22).

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority and affix a notice to a conspicuous object on or near the site of the works which are the subject of such appeal, which must give details of the decision of the local authority and notice that an appeal has been made together with the address within the locality where the appeal documents may be inspected and details of the manner in which representations on the appeal may be made;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
- (d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations under sub-paragraph (d); and
- (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

(8) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(22) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990. There are other amendments to section 61 which are not relevant to this Order.

(9) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(10) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(11) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(12) Except where a direction is given under paragraph (13) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(14) In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Department for Levelling Up, Housing and Communities or such guidance as may from time to time replace it.

Commencement Information

I12 Art. 52 in force at 6.6.2022, see [art. 1](#)

Arbitration

53. Except where otherwise expressly provided for in this Order and unless otherwise agreed 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.

Commencement Information

I13 Art. 53 in force at 6.6.2022, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The M25 Junction 28 Development Consent Order 2022, PART 6.