
STATUTORY INSTRUMENTS

2020 No. 474

The Lake Lothing (Lowestoft) Third Crossing Order 2020

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Lake Lothing (Lowestoft) Third Crossing Order 2020 and comes into force on 21st May 2020.

Interpretation

2.—(1) In this Order, unless otherwise stated—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

“the 1984 Act” means the Road Traffic Regulation Act 1984(5);

“the 1990 Act” means the Town and Country Planning Act 1990(6);

“the 1991 Act” means the New Roads and Street Works Act 1991(7);

“the 2004 Act” means the Traffic Management Act 2004(8);

“the 2008 Act” means the Planning Act 2008(9);

“the 2009 Act” means the Marine and Coastal Access Act 2009(10);

“AB Ports” means Associated British Ports, (company number ZC000195), whose registered office address is 25 Bedford Street, London WC2E 9ES;

“address” includes any number or address for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“appointed person” means—

(a) a person acting in the course of that person’s duties who—

(i) is an employee, agent, contractor or sub-contractor of the undertaker; or

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- (1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1980 c. 66.
(4) 1981 c. 66.
(5) 1984 c. 27.
(6) 1990 c. 8.
(7) 1991 c. 22.
(8) 2004 c. 18.
(9) 2008 c. 29.
(10) 2009 c. 23.

- (ii) is authorised by the undertaker to exercise one or more of its functions under this Order; or
- (b) a constable, Police Community Support Officer, an officer of the Driver and Vehicle Standards Agency, an officer of the Health and Safety Executive, person authorised for the purposes of section 44 (powers of fire-fighters etc in an emergency etc) of the Fire and Rescue Services Act 2004⁽¹¹⁾ or a person accredited by or under section 41 (accreditation under community safety accreditation schemes) of the Police Reform Act 2002⁽¹²⁾, acting in the execution of that person's duties within the new bridge area;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development within the meaning of section 32 of the 2008 Act that is authorised by this Order;

“book of reference” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“business day” means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act⁽¹³⁾;

“Cadent” means Cadent Gas Limited (company number 10080864), whose registered office is at Ashbrook Court, Prologis Park, Central Boulevard, Coventry, CV7 8PE, or any successor in title or assign including a successor to their licence as a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽¹⁴⁾;

“capital dredge” means a dredge which comprises the excavation of the seabed, in an area or down to a level (relative to ordnance datum) not previously dredged during the preceding 10 years;

“carriageway” has the same meaning as in the 1980 Act;

“classification of roads plan” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the classification of roads plan for the purposes of this Order;

“commence” means beginning to carry out any material operation (as defined in section 56(4)⁽¹⁵⁾ (time when development begun) of the 1990 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions; receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, and “commencement” is to be construed accordingly;

“construct” includes carrying out, placing, altering, replacing, relaying and removal and “construction” is to be construed accordingly;

“cycleway” means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way: a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988⁽¹⁶⁾) with a right of way on foot and a right of way on horseback or leading a horse;

(11) 2004 c. 21. Section 44 was amended by section 6 of the Emergency Workers (Obstruction) Act 2006 (c. 39).

(12) 2002 c. 30. Section 41 was amended by section 52, and paragraph 42 of Schedule 14 to, the Police and Justice Act 2006 (c. 48).

(13) 1971 c. 80.

(14) 1986 c. 44.

(15) Section 56(4) was amended by paragraph 10(2) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 56 which are not relevant to this Order.

(16) 1988 c. 52.

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but in an electronic form;

“engineering section drawings and plans” means the documents of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the engineering section drawings and plans for the purposes of this Order;

“environmental statement” means the documents of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the environmental statement for the purposes of this Order;

“flood risk activity” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016⁽¹⁷⁾;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“general arrangement plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the general arrangement plans for the purposes of this Order;

“harbour authority” means AB Ports in its role as the owner and operator of, and the statutory harbour authority for, Lowestoft Harbour as established by section 8 of, and paragraph 2 of Schedule 3 (powers of Associated British Ports) to the Transport Act 1981⁽¹⁸⁾;

“harbour limits plan” means the plan of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the harbour limits plan for the purposes of this Order;

“harbour master” means the harbour master appointed by the harbour authority and includes that person’s authorised deputies and assistants;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“interim design guidance manual” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the interim design guidance manual for the purposes of this Order and which sets out the principles for the detailed design of the authorised development;

“Lake Lothing” means the navigable saltwater lake within the town of Lowestoft in the area of East Suffolk Council between the North Sea and Oulton Broad, as identified by reference points 652111E, 292801N, 655207E, 292615;

“land plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the land plans for the purposes of this Order;

“level of high water” means the level of mean high water springs;

“limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation);

“limits of dredging” means the lines marked “limits of dredging” on the limits of dredging plan;

“limits of dredging plan” means the plan of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the limits of dredging plan for the purposes of this Order;

“local highway authority” means Suffolk County Council in its role as highway authority for the county of Suffolk pursuant to the 1980 Act;

“local planning authority” means East Suffolk Council, or any successor to it as planning authority;

⁽¹⁷⁾ S.I. 2016/1154, as amended by S.I. 2017/1012, S.I. 2017/1075, S.I. 2018/110, S.I. 2018/428, S.I. 2018/575, S.I. 2018/1227 and S.I. 2019/39.

⁽¹⁸⁾ 1981 c. 56.

“Lowestoft Harbour” means the harbour over which the harbour authority has jurisdiction as is delineated on the harbour limits plan together with any quays, docks or other land held in connection with that harbour;

“maintain” includes inspect, repair, adjust, alter, remove, replace, or reconstruct in relation to the authorised development and any derivative of “maintain” is to be construed accordingly;

“maintenance dredge” means any activity which comprises the removal of recently-accumulated sediments such as mud, sand and gravel in order to keep channels, berths and other areas at their designed depths and which takes place in circumstances where—

- (a) the level of the seabed to be restored by the dredging is not lower than it has been at any time during the past 10 years; and
- (b) there is evidence that dredging has previously been undertaken to that level (or lower) during that period;

“MMO” means the Marine Management Organisation;

“mooring” means any buoy, pile, post, chain, pillar, pontoon, fixed rail or like apparatus or convenience provided or used for the mooring of vessels;

“new bridge” means Work Nos. 1B, 1C, 1D and 1E (including without limitation the piers, bridge deck, carriageway and parapets);

“new bridge area” means the new bridge, the new bridge approaches, the new bridge control building area and the new bridge infrastructure, as shown on the new bridge area plans;

“new bridge approaches” means the northern and southern approaches to the new bridge (respectively “the new bridge northern approach” and “the new bridge southern approach”), the centrelines of which are shown on the new bridge area plans;

“new bridge area plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the new bridge area plans for the purposes of this Order;

“new bridge control building area” means the area outlined in green on Sheet 2 of the new bridge area plans;

“new bridge infrastructure” means the infrastructure elements supporting the new bridge including (without limitation) the cables, drainage, electricity and water supplies, and fenders relating to the new bridge, as well as any plant and machinery and any emergency, safety or communications equipment required for the construction, maintenance or operation of the new bridge;

“Order land” means the land shown coloured pink and the land shown coloured blue on the land plans and which is described in the book of reference;

“Order limits” means the limits of land to be acquired permanently or used temporarily as shown on the land plans, and the limits of land within which the authorised development, as shown on the works plans, may be carried out;

“owner” in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(19);

“preliminary navigation risk assessment” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the preliminary navigation risk assessment for the purposes of this Order and which sets out the measures to be undertaken to ensure that risks to navigation from the construction and operation of the new bridge are as low as reasonably practicable;

(19) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

“PMSC Stakeholder Group” means the group comprising the group maintained and consulted by the harbour authority in accordance with its duties under the Port Marine Safety Code, and the undertaker;

“rights of way and access plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the rights of way and access plans for the purposes of this Order;

“Scheme of Operation” means the document of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the scheme of operation for the purposes of this Order, or any variation to or replacement of that scheme approved by the harbour authority or the undertaker under article 41(2), or by the Secretary of State under article 41(5), as the case may be;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8) (statutory undertakers’ land) of the 2008 Act;

“statutory utility” means—

- (a) a statutory undertaker; or
- (b) a public communications provider as defined in section 151(1) (interpretation) of the Communications Act 2003(20);

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tidal work” means so much of any work authorised by this Order as is in, under or over tidal waters or tidal lands below the level of high water;

“traffic authority” has the same meaning as in section 121A(21) (traffic authorities) of the 1984 Act;

“traffic regulation measures plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the traffic regulation measures plans for the purposes of this Order;

“tree preservation order trees location plan” means the plan of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the tree preservation order trees location plan for the purposes of this Order;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means Suffolk County Council of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX;

“vessel” means every description of vessel with or without means of propulsion of any kind and includes anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water, a seaplane on or in the water and a hovercraft within the meaning of the Hovercraft Act 1968(22);

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“works plans” means the plans of that description as referenced in Schedule 14 (documents to be certified) certified by the Secretary of State as the works plans for the purposes of this Order.

(20) 2003 c. 21.

(21) Section 121A was inserted by section 168(1) of, and paragraph 70 of Part 2 to Schedule 8 to, the 1991 Act (c. 22).

(22) 1968 c. 59.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the enjoyment of interests or rights and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plan to which the reference applies.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

Disapplication of legislation, etc.

3.—(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 purposes of, or in connection with, the construction of the authorised development and, within any maintenance period defined in article 34(12), any maintenance of any part of the authorised development—

- (a) byelaw 25 of the Lowestoft Harbour Byelaws 1993(23);
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the appropriate agency) to the Water Resources Act 1991(24);
- (c) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(25);
- (d) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 in respect of a flood risk activity only; and
- (e) the provisions of the Neighbourhood Planning Act 2017(26) insofar as they relate to temporary possession of land under articles 33 (temporary use of land for carrying out the authorised development) and 34 (temporary use of land for maintaining the authorised development) of this Order.

(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(27) any building comprised in the authorised development is 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.

(23) Byelaws for the Port of Lowestoft made by the harbour authority under section 83 of the Harbours, Docks and Piers Clauses Act 1847 (1847 c. 27) (incorporated by section 51 of the British Transport Docks Act 1964 (1964 c.38)) and by section 52 of the British Transport Docks Act 1964.

(24) 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 2009 Act (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 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(25) 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.

(26) 2017 c. 20.

(27) S.I. 2010/948.

(3) As from the date on which the authorised development is commenced any conditions of a planning permission granted under section 57(28) (requirement of planning permission) of the 1990 Act which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Schedule 2 (requirements).

PART 2

WORKS PROVISIONS

Principal powers

Development consent, etc., granted by the Order

4.—(1) Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within, adjoining, or sharing a common boundary with the Order limits has effect subject to the provisions of this Order.

Limits of deviation

5.—(1) Subject to the following provisions of this article, the undertaker must construct the authorised development within the Order limits.

(2) In constructing and maintaining the non-linear works comprised in the authorised development, the undertaker may deviate laterally within the limits of deviation for those works shown on the works plans.

(3) In constructing or maintaining the linear works comprised in the authorised development—

- (a) in the case of linear works for which limits of deviation are shown on the works plans, the undertaker may deviate laterally from the lines or situations shown on those plans to the extent of the limits of deviation; and
- (b) in the case of linear works for which limits of deviation are not shown on the works plans, the undertaker may deviate laterally from the lines or situations shown on those plans to the extent of the Order limits.

(4) In constructing and maintaining the part of the new bridge comprising Work No.1D, the undertaker—

- (a) must not, unless otherwise agreed with the harbour authority, construct any tidal work within the part of Lake Lothing which is located between the two areas identified in paragraph (5); and
- (b) must safeguard the width of the navigable channel within Lake Lothing by preserving a distance of no less than 32 metres between the outer edge of the fenders referred to in each of paragraphs (5)(a) and (5)(b).

(5) The two areas referred to in paragraph (4) are—

- (a) in relation to the pier located to the south of the north quay of Lowestoft Harbour, the area between the north quay wall and the outer edge of the fenders surrounding that pier; and

(28) Section 57 was amended by paragraphs 34 and 35 of Schedule 2 to the 2008 Act, paragraphs 1 and 3 of Schedule 2 to the Localism Act 2011 (c. 20) and paragraphs 2 and 4 of Part 2 of Schedule 4 to the Infrastructure Act 2015 (c. 7).

- (b) in relation to the pier located to the north of the south quay of Lowestoft Harbour, the area between the south quay wall and the outer edge of the fenders surrounding that pier.
- (6) In constructing and maintaining the authorised development, the undertaker may deviate vertically from the levels shown on the engineering section drawings and plans—
- (a) to any extent upwards as the undertaker considers to be necessary or convenient but not exceeding 0.5 metres or, in relation to the parts of the authorised development referred to in column (1) of the table below, not exceeding the limit for each such part set out in the corresponding entry in column (2) of that table; and
- (b) subject to paragraph (7), to any extent downwards as the undertaker considers to be necessary or convenient, except in relation to the parts of the authorised development referred to in column (1) of the table below, where the extent of permitted downwards deviation for each such part is set out in the corresponding entry in column (3) of that table.

<i>(1)</i> <i>Numbered Work</i>	<i>(2)</i> <i>Upwards vertical limit of deviation</i>	<i>(3)</i> <i>Downwards vertical limit of deviation</i>
Work No. 1A	1 metre	1.5 metres
Work No. 1B	1 metre	2.3 metres
Work No. 1C	1 metre	4 metres
Work No. 1D	1 metre	2.5 metres
Work No. 1E	1 metre	1.1 metres
Work No. 5	1.5 metres	
Work No. 6	5 metres	2.5 metres

(7) Paragraph (6)(b)—

- (a) does not prevent the undertaker, in constructing the piles comprising part of each of Work Nos. 1B, 1C, 1D and 1E, from deviating to any extent downwards as the undertaker considers to be necessary or convenient;
- (b) does not permit the undertaker in constructing the bridge deck between piers within Lake Lothing, comprising part of Work No. 1D, to deviate downwards to a level which is less than 12 metres above Highest Astronomical Tide;
- (c) does not prevent the undertaker, in constructing the lifting elements of the superstructure of the new bridge, comprising part of Work No. 1D, from deviating by up to 2.5 metres above the levels shown on the engineering section drawings and plans (mainline long section sheet 2 of 2), and to any extent downwards as the undertaker considers to be necessary or convenient; and
- (d) does not permit the undertaker in constructing the bridge deck comprising part of Work No. 1B, to deviate downwards to a level which provides less than 4.9 metres headroom above the running rail of the railway.
- (8) The undertaker must not undertake any capital dredge to a depth lower than—
- (a) 6.4m below chart datum in respect of works in Lake Lothing except Work No.7; and
- (b) 3m below chart datum in respect of Work No.7,

unless the undertaker has demonstrated to the MMO and the MMO has agreed in writing that dredging to a depth lower than those set out in sub-paragraphs (a) and (b) would not give rise to any

materially new or materially different environmental effects than those assessed in the environmental statement.

(9) Without limitation on the scope of paragraphs (2) to (7) in constructing or maintaining the authorised development the undertaker may—

- (a) deviate by up to 3 metres from the points of commencement and termination of any of the linear works, except in the case of the coterminous point of termination and commencement of Work Nos 1A and 1B, from which the undertaker may deviate by up to 10 metres in a north-easterly direction following the centreline of Work No. 1A, and by up to 3 metres in a south-westerly direction following the centreline of Work No. 1B; and
- (b) deviate from the design of the new bridge or bridge structure shown on the engineering section drawings and plans, provided that any such deviation is in accordance with the final version of the design guidance manual approved under paragraph 3(2) of Schedule 2.

(10) In this article, references to—

- (a) “linear works” are references to any works shown on the works plans by way of centre lines; and
- (b) “non-linear works” are references to any other works shown on the works plans.

Streets

Street works

6.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any street and may—

- (a) break up or open the street, or any sewer, drain or tunnel beneath it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) carry out any works required for or incidental to any works referred to in subparagraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The undertaker must not carry out works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

Application of the 1991 Act

7.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or

(b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64(29) (dual carriageways and roundabouts) of the 1980 Act or section 184(30) (vehicle crossings) of that Act.

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works carried out under the powers of this Order—

section 56(31) (directions as to timing);

section 56A(32) (power to give directions as to placing of apparatus);

section 58(33) (restrictions following substantial road works);

section 58A(34) (restriction on works following substantial street works);

section 73A(35) (power to require undertaker to re-surface street);

section 73B(36) (power to specify timing etc. of re-surfacing);

section 73C(37) (materials; workmanship and standard of re-surfacing);

section 78A(38) (contributions to costs of re-surfacing by undertaker); and

Schedule 3A(39) (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 11 (temporary stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(40) referred to in paragraph (4) are—

section 54(41) (advance notice of certain works), subject to paragraph (6);

section 55(42) (notice of starting date of works), subject to paragraph (6);

section 57(43) (notice of emergency works);

section 59(44) (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

(29) Section 64 was amended by Schedule 17 to the Local Government Act 1985 (c. 51) and Schedule 9 to the 1991 Act.

(30) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 9 of Part 1 of Schedule 8, and Schedule 9, to the 1991 Act.

(31) Section 56 was amended by section 43 of the 2004 Act.

(32) Section 56A was inserted by section 44 of the 2004 Act.

(33) Section 58 was amended by section 51 of the 2004 Act.

(34) Section 58A was inserted by section 52(1) of the 2004 Act.

(35) Section 73A was inserted by section 55(1) of the 2004 Act.

(36) Section 73B was inserted by section 55(1) of the 2004 Act.

(37) Section 73C was inserted by section 55(1) of the 2004 Act.

(38) Section 78A was inserted by section 57(1) of the 2004 Act.

(39) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the 2004 Act.

(40) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the 2004 Act.

(41) Section 54 was also amended by section 49(1) of the 2004 Act.

(42) Section 55 was also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 Act.

(43) Section 57 was also amended by section 52(3) of the 2004 Act.

(44) Section 59 was amended by section 42 of the 2004 Act.

section 69 (works likely to affect other apparatus in the street);
section 75 (inspection fees);
section 76 (liability for cost of temporary traffic regulation); and
section 77 (liability for cost of use of alternative route),
and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Section 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration, or diversion (as the case may be) required in a case of emergency.

- (7) Nothing in article 8 (construction and maintenance of new, altered, or diverted streets)—
- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the undertaker is not by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
 - (b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Construction and maintenance of new, altered or diverted streets and other structures

8.—(1) Any highway to be constructed altered or diverted under this Order including any culverts or other structures laid under it must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a street which is not and is not intended to be a public highway is constructed, altered or diverted under this Order, the street (or part of the street as the case may be) must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) The structure and highway surface of the new bridge must be maintained by and at the expense of the local highway authority from the date of the completion of the new bridge.

(4) Where land not previously part of the public highway comes to form part of the public highway by virtue of the construction, diversion or alteration of the streets set out in Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access), unless otherwise agreed with the street authority, the land is deemed to have been dedicated as public highway on the expiry of a period of 12 months from completion of the works to the street that has been constructed, altered or diverted.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by the undertaker to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;

- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(7) The date of completion of any works to a highway pursuant to this article is to be agreed by the undertaker and the local highway authority.

(8) The date of completion of any works to a street which is not and is not intended to be a highway pursuant to this article is to be agreed by the undertaker and the street authority.

Classification of roads, etc.

9. On the date on which the roads described in Schedule 3 (classification of roads, etc) are completed and open for traffic—

- (a) the roads described in paragraphs 1 to 16 of Part 1 (A12 and A146) of Schedule 3 are to be classified as the A12, as if such classification had been made under section 12(3) (general provisions as to principal and classified roads) of the 1980 Act;
- (b) the roads described in paragraphs 17 to 24 of Part 1 of Schedule 3 are to be classified as the A146, as if such classification had been made under section 12(3) (general provisions as to principal and classified roads) of the 1980 Act; and
- (c) the roads described in Part 2 (other roads) of Schedule 3 are to be classified as set out in that Part and are, where specified in that Part, to be classified roads for the purpose of any enactment or instrument which refers to highways classed as classified roads, as if such classification has been made under section 12(3) of the 1980 Act.

Permanent stopping up of streets and private means of access

10.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Parts 1, 2, and 3 of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Part 1 (highways to be stopped up for which a substitute is to be provided and new highways which are otherwise provided) and Part 2 (private means of access to be stopped up for which a substitute is to be provided and new private means of access which are otherwise to be provided) of Schedule 4 is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (3) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private

means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No private means of access specified in columns (1) and (2) of Part 3 (private means of access to be stopped up for which no substitute is provided) of Schedule 4 is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all of the land which abuts on either side of the private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land;
- (b) there is no right of access to the land from the private means of access concerned;
- (c) there is reasonably convenient access to the land otherwise than from the private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) This article is subject to article 36 (apparatus and rights of statutory undertakers and utilities in stopped up streets).

Temporary stopping up and restriction of use of streets

11.—(1) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article and lying within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

12. The undertaker may, for the purposes of the authorised development and with the consent of the street authority, form and lay out such other means of access or improve existing means of access,

at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

- 13.**—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;
 - (b) the strengthening or improvement of any street under the powers conferred by this Order;
 - (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
 - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
 - (e) the carrying out in the street of any of the authorised development; or
 - (f) any such works as the parties may agree.
- (2) Such agreement may, without limitation on the scope of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and the street authority specifying a reasonable time for completion of the works;
 - (c) provide for the dedication of any new street as public highway further to section 38(45) (power of highway authorities to adopt by agreement) of the 1980 Act; and
 - (d) contain such terms as to payment and otherwise as the parties consider appropriate.

Use of private roads for construction

14.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

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.

(45) Section 38 was amended by Schedule 17 to the Local Government Act 1985 (c. 51), section 22(1) of the 1991 Act and paragraphs 1 and 19 of Part 1 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

(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(46).

(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.

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.

(46) 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).

(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(47) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Section 13(48) (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(49) (application of compulsory acquisition provisions) of the 2008 Act.

(47) Section 152 was amended by S.I. 2009/1307.

(48) 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).

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

(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.

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.

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.

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.

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.

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.

PART 3

POWERS OF ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Compulsory acquisition of land

22.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or as is incidental to it.

(2) This article is subject to article 26 (compulsory acquisition of rights, etc) and article 27 (acquisition of subsoil and airspace only) and article 33 (temporary use of land for carrying out the authorised development).

Crown land

23. The undertaker may exercise any right under this Order to acquire compulsorily an interest in any land which is Crown land (as defined in the 2008 Act), provided that the interest to be acquired is—

- (a) identified in the book of reference;
- (b) for the time being held otherwise than by or on behalf of the Crown; and
- (c) in a plot that is expressly referred to in a consent in writing provided by the relevant Crown authority under section 135 (orders: Crown land) of the 2008 Act.

Compulsory acquisition of land – incorporation of the mineral code

24. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for the “acquiring authority” there is substituted “the undertaker”.

Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily

25.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4(50) (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act),

in relation to any part of the Order land.

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights, etc.

26.—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose such restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in columns (1) and (2) of Part 1 (land in which only new rights etc., may be acquired) and Part 2 (rights for the benefit of Cadent) of Schedule 6 (land in which only new rights etc., may be acquired), the undertaker's powers of compulsory acquisition under paragraph (1) are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of such restrictive covenants as the undertaker may require for or in connection with the authorised development for the purposes specified in the corresponding entry in column (3) of Part 1 and Part 2 of Schedule 6 in relation to that land.

(3) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Part 2 of Schedule 6 for the benefit of Cadent—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Part 1 of Schedule 6 as may be required for the benefit of any other statutory undertaker; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Part 1 of Schedule 6 as are required for the benefit of any other statutory undertaker.

(4) Subject to section 8(51) (other provisions as to divided land) of, and Schedule 2A(52) (counter-notice requiring purchase of land) to, the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Acquisition of subsoil and airspace only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights over, the subsoil beneath, or the surface of, or the airspace above, the land referred to in paragraph (1) of article 22

(50) Section 4 was amended by sections 184, 185 and Schedule 18 paragraph 2 to the Housing and Planning Act 2016 (c. 22).

(51) Section 8 was amended by paragraphs 1 and 2 of Schedule 17 to the Housing and Planning Act 2016 and S.I. 2009/1307.

(52) Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016.

(compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) In the case of the Order land specified in columns (1) and (2) of Schedule 8 (land in which only airspace and new rights may be acquired) the undertaker's powers of compulsory acquisition under article 22 are limited to—

- (a) the acquisition of such airspace; and
- (b) the acquisition of such easements or other new rights and the imposition of such restrictive covenants over the airspace and the surface of the land,

as the undertaker may require for or in connection with the authorised development.

(3) Where the undertaker acquires any part of, or rights over, the subsoil beneath, or the surface of, or the airspace over land referred to in paragraphs (1) or (2), the undertaker is not required to acquire an interest in any other part of the land.

(4) The following do not apply in connection with the exercise of the power under paragraphs (1) and (2) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by article 32 (modification of the 1965 Act);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(53) (blighted land; proposed acquisition of part interest; material detriment test) of the 1990 Act.

(5) Paragraphs (3) and (4) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

(6) References in paragraph (2)(a) to airspace are references to the airspace lying at and above the heights specified in column (3) of Schedule 8, which are heights above Ordnance Datum and references in paragraph (2)(b) to airspace are references to the airspace lying below the airspace referenced in paragraph (2)(a).

(7) For the purpose of paragraph (6) “Ordnance Datum” means Ordnance Datum Newlyn, which is the national system for height referencing in mainland Great Britain and which forms the reference frame for heights above mean sea level, at the time of this Order coming into force.

Private rights over land

28.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

(53) Section 153(4A) was inserted by section 200(2) of the Housing and Planning Act 2016 (c. 22).

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker whether compulsorily or by agreement;
- (b) on the date of entry onto land by the undertaker under section 11(1) of the 1965 Act; or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 35 (statutory undertakers and utilities) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given to the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

29.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of if it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the carrying out of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

Rights over or under streets

30.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Application of the 1981 Act

- 31.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied, has effect with the following modifications.
- (3) In section 1 (application of Act) for subsection (2) substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 5 (earliest date for execution of declaration) in subsection (2), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(**54**) (time limit for general vesting declaration).
- (6) In section 5B(**55**) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118(**56**) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008”, the five year period mentioned in article 25 of the Lake Lothing (Lowestoft) Third Crossing Order 2020”.
- (7) In section 6(**57**) (notices after execution of declaration) in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(**58**) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(**59**) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 27(4) (acquisition of subsoil and airspace only) of the Lake Lothing (Lowestoft) Third Crossing Order 2020, which excludes the acquisition of subsoil or airspace only from this Schedule”
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 32 (modification of the 1965 Act) to the compulsory acquisition of land under this Order.

Modification of the 1965 Act

- 32.**—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied by this Order to section 125 (application of compulsory acquisition provisions) of the 2008 Act is modified as set out in paragraphs (2) to (5).
- (2) In section 4A(1)(**60**) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 25 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the Lake Lothing (Lowestoft) Third Crossing Order 2020”.

(54) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(55) Section 5B was inserted by section 202(2) of Schedule 3 to the Housing and Planning Act 2016.

(56) Section 118 was amended by paragraphs 1 and 59 of Schedule 13 and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(57) Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 14 to the Housing and Planning Act 2016.

(58) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2017/16.

(59) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

(60) Section 4A was inserted by section 202(1) of the Housing and Planning Act 2016.

- (3) In section 11A(**61**) (powers of entry: further notice of entry)—
- (a) in subsection (1)(a) after “land” insert “under that provision”; and
 - (b) in subsection (2) after “land” insert “under that provision”.
- (4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 25 (time limit for exercise of powers to possess land temporarily to acquire land compulsorily) of the Lake Lothing (Lowestoft) Third Crossing Order 2020”.
- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) for paragraphs 1(2) and 14(2) substitute—
 - “(2) But see article 27(4) (acquisition of subsoil and airspace only) of the Lake Lothing (Lowestoft) Third Crossing Order 2020, which excludes the acquisition of subsoil or airspace only from this Schedule”; and
 - (b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 16 (protective works to buildings), 33 (temporary use of land for carrying out the authorised development) or 34 (temporary use of land for maintaining the authorised development) of the Lake Lothing (Lowestoft) Third Crossing Order 2020.”

Temporary possession of land

Temporary use of land for carrying out the authorised development

33.—(1) The undertaker may, in connection with the carrying out of the authorised development but subject to article 25(2) (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 9 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any of the Order land in respect of which no notice of entry has been served under section 11(**62**) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(**63**) (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from the land referred to in sub-paragraphs (a)(i) to (ii);

(61) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(62) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing Consequential Provisions Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measures 2006 (No. 1) and S.I. 2009/1307.

(63) Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

- (c) construct temporary works (including the provisions of means of access) and buildings on the land referred to in sub-paragraphs (a)(i) to (ii); and
- (d) construct any works on the land referred to in sub-paragraphs (a)(i) to (ii) as are mentioned in Schedule 1 (authorised development).

(2) Not less than three months (or such other period agreed in writing between the undertaker and the owner of the land) before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the works, facilities or other purpose for which the undertaker intends to take possession of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of any land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 9;
- (b) in the case of any land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the works, use of facilities or other purpose for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land; or
- (c) in the case of any land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the authorised development.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) Any person who suffers loss as a result of the suspension of any private right of navigation under this article is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13(64) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of 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).

Temporary use of land for maintaining the authorised development

34.—(1) Subject to paragraph (3), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than three months (or such other period agreed in writing between the undertaker and the owner of the land) before entering upon and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the period for which temporary possession will be taken and the purpose for which the undertaker intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be taken.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) Any person who suffers loss as a result of the suspension of any private right of navigation under this article is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of any works, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(64) Section was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of 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.

(12) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which—

- (a) that part of the authorised development is first opened for public use (where that part of the authorised development is intended to be used by the public); or
- (b) in respect of any other part of the authorised development, that part is first brought into operational use by the undertaker.

Supplementary

Statutory undertakers and utilities

35.—(1) Subject to the provisions of article 26(2) (compulsory acquisition of rights), Schedule 13 (protective provisions) and paragraph (2), the undertaker may—

- (a) exercise the powers conferred by articles 22 (compulsory acquisition of land) and 26 (compulsory acquisition of rights) in relation to so much of the Order land as belongs to statutory utilities; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory utilities over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) article 36 (apparatus and rights of statutory undertakers and utilities in stopped up streets).

Apparatus and rights of statutory undertakers and utilities in stopped up streets

36.—(1) Where a street is stopped up under article 10 (permanent stopping up of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 10 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the carrying out of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the carrying out of the relocation works.

(4) If in the course of the carrying out of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the carrying out of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article “relocation works” means work carried out, or apparatus provided, under paragraph (2).

Recovery of costs of new connection

37.—(1) Where any apparatus of a statutory utility is removed under article 35 (statutory undertakers and utilities) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 35, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 36 (apparatus and rights of statutory undertakers and utilities in stopped up streets) or Part 3 of the 1991 Act applies.

Compensation

Disregard of certain interests and improvements

38.—(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 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.

Set-off for enhancement in value of retained land

39.—(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 26 (compulsory acquisition of rights, etc.), 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.

No double recovery

40. 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.

PART 4

OPERATIONAL PROVISIONS

Operation of the new bridge

41.—(1) The undertaker must operate the new bridge in accordance with the Scheme of Operation.

(2) The Scheme of Operation may be varied or replaced by the undertaker at any time—

- (a) on the undertaker's own volition, with the consent of the harbour authority (such consent not to be unreasonably withheld) or, in accordance with paragraph (5), the consent of the Secretary of State; or
- (b) following receipt of a request made by the harbour authority for the undertaker to vary or replace the Scheme of Operation, which the undertaker must not unreasonably refuse to agree to, or then delay in proceeding with under this article.

(3) Before varying or replacing the Scheme of Operation under paragraph (2), the undertaker must request that the harbour authority consults the PMSC Stakeholder Group on the proposed variation to or replacement of the Scheme of Operation, and on receiving such a request the harbour authority must then consult the PMSC Stakeholder Group at the earliest opportunity.

(4) When consulting the PMSC Stakeholder Group under paragraph (3)—

- (a) the harbour authority must provide to the PMSC Stakeholder Group information relating to the outcome of any review by the harbour authority of its navigation risk assessment or of any other formal risk assessment it may have carried out in connection with the proposed variation to or replacement of the Scheme of Operation; and
- (b) the undertaker and the harbour authority must have regard to any representations made by the PMSC Stakeholder Group in relation to the proposed variation to or replacement of the Scheme of Operation, prior to the undertaker or the harbour authority providing its consent under paragraph (2)(a) or (b) (as applicable).

(5) If the consent of the undertaker or the harbour authority (as applicable) required under paragraph (2) is not given—

- (a) within 28 days of submission to the other party of an application for its consent to a proposed variation to or replacement of the Scheme of Operation; or
- (b) before the expiration of any extended deadline for that consent agreed to by the party proposing the amendment, the grant of such an extension not to be unreasonably withheld or delayed,

then the proposed variation to or replacement of the Scheme of Operation must be submitted by the undertaker to the Secretary of State for approval.

(6) Any submission to the Secretary of State under paragraph (5) must also include a report setting out any representations of the PMSC Stakeholder Group made in response to the proposed variation to or replacement of the Scheme of Operation under paragraph (2).

(7) Following submission of the proposed variation to or replacement of the Scheme of Operation to the Secretary of State for approval under paragraph (5), the undertaker or the harbour authority (as applicable) may still grant its consent to the proposed variation to or replacement of the Scheme of Operation at any time prior to the Secretary of State's determination, but if the undertaker or the harbour authority does so it must on the same day inform the other party and the Secretary of State of its consent.

(8) The harbour authority must issue a general direction imposing the relevant requirements of the Scheme of Operation on the masters of vessels not less than 21 days prior to the new bridged

opening for public used or, in relation to any variation to or replacement of the Scheme of Operation under paragraphs (2), as soon as practicable following any variation or replacement or with such prior notice as the harbour authority considers appropriate in consultation with the undertaker.

(9) Article 62 (arbitration) does not apply to any dispute arising under this article.

Extinguishment of right of navigation within Lake Lothing in connection with authorised development

42.—(1) For the purpose of protecting the new bridge, the public right of navigation within the areas of Lake Lothing identified in paragraph (2) is extinguished in accordance with the provisions of this article.

(2) The areas referred to in paragraph (1) are—

- (a) in relation to the pier located to the south of the north quay of Lowestoft Harbour, the area between the north quay wall and the outer edge of the fenders surrounding that pier; and
- (b) in relation to the pier located to the north of the south quay of Lowestoft Harbour, the area between the south quay wall and the outer edge of the fenders surrounding that pier.

(3) Paragraph (1) does not take effect until the undertaker has, following practical completion of the new bridge—

- (a) notified the harbour authority of the date from which the extinguishment is to have effect;
- (b) published notice of the extinguishment and the date from which the extinguishment is to have effect in *Lloyd's List* and once in each of two successive weeks in a local newspaper published or circulating in the area of East Suffolk Council, with an interval between the earliest and latest notices of not less than 7 clear days; and
- (c) displayed notice of the extinguishment and the date from which the extinguishment is to have effect in a conspicuous position adjacent to Lake Lothing from the date of the first notice published under sub-paragraph (b), until at least 7 days after the last notice published under sub-paragraph (b).

(4) The date that is notified, published and displayed pursuant to paragraph (3) as the date from which the extinguishment is to have effect must not be earlier than 14 days after the last date on which a notice is published pursuant to paragraph (3).

(5) As soon as possible following receipt by the harbour authority of notice given by the undertaker under paragraph (3), the harbour authority must issue a notice to mariners giving the commencement date and other particulars of the extinguishment to which the notice relates.

(6) A master of a vessel other than a vessel—

- (a) which is under the control of the harbour authority;
- (b) which is carrying out the statutory functions of the harbour authority, or
- (c) is directed by the harbour master,

must not, except in an emergency, allow a vessel to enter into the areas referred to in paragraph (2) 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.

Maintenance of authorised development

43.—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) Paragraph (1) does not extend to any maintenance works which would give rise to any materially new or materially different environmental effects than those assessed in the environmental statement.

Subsidiary works and operations in Lake Lothing

44.—(1) Subject to the provisions of this Order, the undertaker may within the Order limits—

- (a) carry out and maintain works for the accommodation or convenience of vessels within Lake Lothing (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons) as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the operation or maintenance of the authorised development; and
- (b) deepen, widen, capital dredge, maintenance dredge, scour, cleanse, alter and improve the bed of Lake Lothing for the purposes of maintaining the authorised development.

(2) Paragraph (1) does not extend to any works which would give rise to any materially new or materially different environmental effects than those assessed in the environmental statement.

(3) Except in the case of emergency, before exercising the powers of paragraph (1), the undertaker must use reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel that may be affected by works undertaken in the exercise of the powers under this article.

(4) The undertaker must pay compensation to any person entitled to compensation under Part 1 (determination of questions of disputed compensation) of the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by paragraph (1).

(5) Any dispute as to a person's entitlement to compensation under paragraph (4) or as to the amount of the compensation must be determined under Part 1 of the 1961 Act.

(6) All materials dredged up or removed by the undertaker in exercise of the powers under this article are the property of the undertaker and may be used, sold, deposited or otherwise disposed of by the undertaker.

Protection against dredging by the harbour authority

45.—(1) The harbour authority must not undertake a capital dredge in Lake Lothing within the limits of dredging without first submitting the plans of the proposed dredging operation to the undertaker for its approval.

(2) Approval under paragraph (1) is not to be unreasonably withheld by the undertaker and approval is deemed to have been granted if the undertaker fails to notify the harbour authority of its decision within 28 days of the submission of the plans.

(3) The harbour authority must carry out the dredging in accordance with the plans approved under this article or settled by arbitration under article 62 (arbitration).

(4) The harbour authority must notify the undertaker at least 5 days before undertaking any maintenance dredge in Lake Lothing within the limits of dredging.

Byelaws

46.—(1) The undertaker may make byelaws regulating the use and operation of the new bridge and the new bridge infrastructure, the maintenance of order and the conduct of persons in the new bridge area and the mooring of vessels to, and the passage of vessels under, the new bridge.

(2) Without limiting the scope of paragraph (1), byelaws made under this article may make provision—

- (a) preventing interference with, or obstruction of, the operation of the new bridge, including from vessels or other facilities machinery apparatus tools or other things provided in connection with the operation of the new bridge;
- (b) preventing interference with the new bridge or the new bridge infrastructure;
- (c) preventing trespass in the new bridge area;
- (d) preventing nuisances on the new bridge or in the new bridge area;
- (e) requiring any person in charge of a motor vehicle which is at rest by reason of breakdown on any part of the new bridge or the new bridge approaches to report that fact and the position and circumstances in which the vehicle is at rest to the undertaker;
- (f) prohibiting any person, other than an appointed person—
 - (i) from carrying out, or attempting to carry out a repair, adjustment or refuelling of such a vehicle to which sub-paragraph (e) applies except with permission expressly given by an appointed person; and
 - (ii) from moving, or attempting to move, such a vehicle from the position in which it is at rest;
- (g) prohibiting a person from obstructing any action taken by an appointed person for the purpose of removing a vehicle;
- (h) ensuring the safety of vehicles passing over the new bridge and through the new bridge area; and
- (i) placing controls on the mooring and passage of vessels.

(3) The undertaker must consult the harbour authority before making byelaws under paragraph (1) and in the case of a byelaw the purpose of which is to control the navigation or mooring of vessels in the Order limits, must not make the byelaw without the consent of the harbour authority (such consent not to be unreasonably withheld).

(4) The byelaws in Schedule 10 (the Lowestoft Third Crossing Byelaws 2020) have effect until such time as they are amended or revoked by byelaws made under paragraph (1) and in the meantime they are to be treated as if they had been made by the undertaker under that paragraph and approved by the harbour authority under paragraph (3).

(5) From the date that this Order comes into force, the Lowestoft Harbour Byelaws 1993(65) are amended as follows—

- (a) in Byelaw 4 (interpretation) insert the following definitions in the appropriate places alphabetically—
 - ““the Order” means the Lake Lothing (Lowestoft) Third Crossing Order 2020”;
 - ““the new bridge” means the bridge authorised by Work No. 1 in Schedule 1 (authorised development) to the Order”;
 - ““the new bridge control building” means the bridge control building authorised by Work No. 6 in Schedule 1 (authorised development) to the Order”;
 - ““the new bridge infrastructure” means the infrastructure elements supporting the new bridge including (without limitation) the cables, drainage, electricity and water supplies, and fenders relating to the new bridge, as well as any plant and machinery and any emergency, safety or communications equipment required for the construction, maintenance or operation of the new bridge”;

(65) Byelaws for the Port of Lowestoft made by the harbour authority under section 83 of the Harbours, Docks and Piers Clauses Act 1847 (1847 c. 27) (incorporated by section 51 of the British Transport Docks Act 1964 (1964 c. 38)) and by section 52 of the British Transport Docks Act 1964.

““the new bridge undertaker” means Suffolk County Council or a person to whom the benefit of the relevant provisions of the Order has been transferred under article 49 (transfer of benefit of Order, etc.) of the Order”; and

““the Scheme of Operation” means the Scheme of Operation having effect from time to time under article 41 (operation of the new bridge) of the Order”; and

(b) after Part IV (Conduct of Persons on Harbour) insert—

“PART IVA

NEW BRIDGE CONTROLS ON VESSELS

Mooring of vessels

37A. A master of a vessel must not moor the vessel—

- (a) to any pier or any other part of the new bridge or the new bridge infrastructure; or
- (b) in the vicinity of the new bridge if to do so might damage the new bridge or the new bridge infrastructure, or impede its operation in accordance with the Scheme of Operation,

without the prior consent of the new bridge undertaker.

Observation of signals and communications

37B. A master of a vessel must observe and comply with the river traffic control signal lights exhibited from the new bridge and follow any instructions issued by the new bridge undertaker.

37C. A master of a vessel approaching or departing the new bridge must make every reasonable effort to maintain continuous contact with the new bridge undertaker within the new bridge control building on VHF channel 14 or (if this becomes obsolete) such other means of communication instructed by the new bridge undertaker.

37D. A master of a vessel awaiting passage under the new bridge must—

- (a) stay clear of the centre channel of Lake Lothing;
- (b) give transiting vessels sufficient room to manoeuvre; and
- (c) ensure that that the vessel does not advance beyond the outer edge of the fenders surrounding the new bridge until instructed to proceed by the new bridge undertaker.

Passage of vessels under the new bridge

37E. Unless otherwise directed by the harbour master, a master of a vessel must direct the vessel to pass under the new bridge by navigating between the two bridge piers which are within Lake Lothing, and must not allow the vessel to pass between a pier and the nearest quay wall of Lowestoft Harbour.

Collision with the new bridge

37F. A master of a vessel which has been involved in a collision with the new bridge must, as soon as reasonably practicable, report the occurrence to the new bridge undertaker

and as soon as reasonably practicable thereafter provide the new bridge undertaker with details of the collision in writing.”.

(6) The harbour authority must not—

- (a) amend or revoke the byelaws inserted into the Lowestoft Harbour Byelaws 1993 by paragraph (5); or
- (b) make byelaws which affect the new bridge, the new bridge infrastructure or impede operation of the new bridge in accordance with the Scheme of Operation,

without first obtaining the consent of the undertaker, such consent not to be unreasonably withheld.

(7) Where there is any inconsistency between the provisions of the Lowestoft Harbour Byelaws 1993 as amended by paragraph (5) or any other byelaws made by the harbour authority and the byelaws made by the undertaker under paragraph (1), the byelaws made by the undertaker under paragraph (1) prevail.

(8) Subject to paragraph (9), the provisions of section 236(3) to (8), and (11) of the Local Government Act 1972(66) (procedure etc., for byelaws) apply in relation to byelaws made by the undertaker under paragraph (1).

(9) The undertaker may make byelaws under paragraph (1), in accordance with the procedure in the Byelaws (Alternative Procedure) (England) Regulations 2016(67) as if those regulations applied to the making, amending and revoking of byelaws under that paragraph.

(10) Byelaws made under this article are enforceable as follows—

- (a) in the case of byelaws made under paragraph (1), by an appointed person; or
- (b) in the case of the amendments to the Lowestoft Harbour Byelaws 1993, which have effect under paragraph (5), by an appointed person or the harbour authority.

(11) A person who breaches a byelaw made under paragraph (1) or (3) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(12) Where damage to the new bridge is attributable to a person in charge of a vessel being in breach of a byelaw made under paragraph (1), or the amendments to the Lowestoft Harbour Byelaws 1993, which have effect under paragraph (5), the undertaker may recover all expenses reasonably incurred in repairing the damage as a debt.

(13) The harbour authority must, within ten days of the receipt of such a request provide all information reasonably requested by the undertaker where the undertaker reasonably suspects that a breach of a byelaw made under paragraph (1) or the amendments to the Lowestoft Harbour Byelaws 1993 which have effect under paragraph (5) has been committed by a person in charge of a vessel.

(14) In this article—

“breakdown” in relation to a motor vehicle, includes mechanical defect, lack of fuel, oil or water required for the vehicle, and any other circumstances in which a person in charge of the vehicle could not immediately, safely and without damage to the vehicle or its accessories, drive it under its own power away from the new bridge; and

“prescribed” means prescribed by byelaws made under paragraph (1).

Fixed penalty notices

47.—(1) This article applies where it appears to an appointed person, or in the case of a byelaw having effect by virtue of article 46(5), the harbour authority, that a person has committed an offence as a result of byelaws made under article 46 (byelaws).

(2) The appointed person may serve on that person a fixed penalty notice in respect of the offence.

(66) 1972 c. 70.

(67) S.I. 2016/165.

- (3) Where a person is given a fixed penalty notice under this article in respect of an offence—
- (a) no proceedings may be instituted for that offence before the expiration of 14 days after the date of the notice; and
 - (b) that person may not be convicted of the offence if the fixed penalty is paid before the expiration of 14 days after the date of the notice.
- (4) A fixed penalty notice must state—
- (a) the amount of the fixed penalty;
 - (b) particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence;
 - (c) the time by which and the manner (including the number to be used for payments by credit or debit card) in which the fixed penalty must be paid; and
 - (d) that proceedings may be instituted if payment is not made within the time specified in the fixed penalty notice.
- (5) The amount of the fixed penalty is—
- (a) one fifth of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction provided that person pays the fixed penalty in full within 7 days of issue of the fixed penalty notice; or
 - (b) one half of the maximum amount of the fine to which the person to whom the fixed penalty notice is issued would be liable on summary conviction.
- (6) An appointed person may require a person to whom this article applies to pay a deposit of one tenth of the maximum amount of the fine to which a person may be liable under level 3 on the standard scale on accepting a fixed penalty notice if that person fails to provide, when requested, a residential address in the United Kingdom.
- (7) Payment of the deposit must be made—
- (a) in person to the appointed person by cash, credit or debit card, if the appointed person has the necessary means to accept payment in that manner;
 - (b) by telephone by credit or debit card to the number stipulated in the fixed penalty notice for making payments; or
 - (c) by App.
- (8) The undertaker must apply the deposit towards payment of the fixed penalty.
- (9) In any proceedings a certificate which—
- (a) purports to be signed on behalf an officer of the undertaker appointed under section 151 (financial administration) of the Local Government Act 1972; and
 - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- is evidence of the facts stated.
- (10) In this article—
- “App” means a software application for use on an electronic device which provides for payment by credit or debit card and which is provided by the undertaker for that purpose;
- “credit card” means a card or similar thing issued to any person, use of which enables the holder to defer payment of the deposit;
- “debit card” means a card or similar thing issued by any person, use of which causes the deposit to be paid by the electronic transfer of funds from any current account of the holder at a bank or other institution providing banking facilities; and

“fixed penalty notice” means a notice offering the opportunity of the discharge of liability to conviction of an offence under byelaws made under article 46.

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.

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 under; 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.

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.

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.

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.

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(68) 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.

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(69); 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(70); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Services Act 2000(71); or
 - (c) in relation to a vehicle waiting when the person in control of it is—

(69) 2003 c. 21. Schedule 3A was inserted by section 4 of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

(70) 1991 c. 56.

(71) 2000 c. 26.

- (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.

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.

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⁽⁷²⁾ 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⁽⁷³⁾; 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.

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

⁽⁷²⁾ 1990 c. 43. There are amendments to section 82(1) which are not relevant to this Order.

⁽⁷³⁾ 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.

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.

Protective provisions

58. Schedule 13 (protective provisions) has effect.

Saving for Trinity House

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

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.

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⁽⁷⁴⁾ 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.

(74) 1978 c. 30.

(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.

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

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.

Signed by authority of the Secretary of State for Transport

30th April 2020

Susan Anderson
Head of the Transport and Works Orders Unit
Department for Transport