
STATUTORY INSTRUMENTS

2020 No. 1075

The Great Yarmouth Third River Crossing
Development Consent Order 2020

PART 4

SUPPLEMENTAL POWERS

Discharge of water

20.—(1) Subject to paragraphs (3), (4) and (5), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991⁽¹⁾.

(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.

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

(5) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of the Waveney, Lower Yare and Lothingland Internal Drainage Board, the provisions of Part 5 of Schedule 14 (protective provisions) apply in substitution for the provisions of paragraphs (3) and (4).

(6) 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 this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency (known as Homes England), the GYPA, the Environment Agency, an internal drainage board, a joint planning board, a local authority, or a sewerage undertaker; and

⁽¹⁾ 1991 c. 56. Section 106 was amended by section 35(1) and (8) and section 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).

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(2) have the same meaning as in that Act.

(8) Nothing in this article overrides the requirement for an environmental permit under regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(3).

Protective works to buildings

21.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building 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 construction 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) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (6)) 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).

(4) The power to survey buildings and land conferred by paragraph (3) includes the power to place and leave monitoring apparatus on land or within a building and to remove such apparatus.

(5) For the purpose of constructing protective works to a building under this article the undertaker may (subject to paragraphs (6) and (7))—

- (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 in either case the undertaker may take exclusive possession of the building and land if this is reasonably necessary for the purpose of constructing the protective works.

(6) 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;
- (c) a right under paragraph (5)(a) to enter and take possession of a building and land within its curtilage; or
- (d) a right under paragraph (5)(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.

(2) 1991 c. 57.

(3) S.I. 2016/1154.

(7) Where a notice is served under paragraph (6)(a), (c) or (d), 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 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 67 (arbitration).

(8) 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.

(9) 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 construction 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.

(10) Subject to article 42 (no double recovery), nothing in this article relieves the undertaker from any liability to pay compensation under section 152(4) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(11) Any compensation payable under paragraph (8) or (9) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(12) Provided that the requirements of paragraph (6) are met, section 13(5) (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession 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(6) (application of compulsory acquisition provisions) of the 2008 Act.

(13) 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 construction, 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 of such operation being disrupted.

Authority to survey and investigate land

22.—(1) Subject to paragraphs (2) to (4), the undertaker may for the purposes of this Order authorise any person to enter on any land within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a)—
 - (i) make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil;

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

(5) 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 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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

- (ii) remove samples of soil or of water within or covering the land;
 - (iii) carry out ecological, environmental or archaeological investigations on the land, including the monitoring of any matter; and
 - (c) 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—
- (a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and
 - (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes are to be made under this article—
- (a) in a highway for which the undertaker is not the highway authority, 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) Provided that the requirements of paragraph (2) are met, 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.

Temporary suspension of navigation in connection with the authorised development

23.—(1) Notwithstanding anything in any other enactment or in any rule of law, the undertaker may in accordance with the provisions of this article temporarily close any part of the river Yare under paragraph (2) or (4) for the purposes of constructing, inspecting or maintaining the authorised development.

(2) For the purposes of constructing the authorised development the undertaker may, having first consulted the GYPA, close the entire width of the river Yare within the Order limits.

(3) The power conferred by paragraph (2) is to be exercised on no more than 3 occasions and the period of closure on each such occasion is not to exceed 72 hours.

(4) In addition to the closures authorised by paragraph (2), the undertaker may, with the consent of the GYPA—

- (a) for the purposes of constructing the authorised development partially reduce the width of the river Yare within the Order limits; and
- (b) for the purposes of inspecting or maintaining the authorised development—
 - (i) partially reduce the width of the river Yare within the Order limits; or
 - (ii) close the entire width of the river Yare within the Order limits in circumstances where there is no reasonable alternative.

(5) The consent of the GYPA under paragraph (4) must not be unreasonably withheld or delayed, and where granted may be given subject to reasonable conditions.

- (6) In the application of paragraph (5) regard is to be had to—
- (a) the urgency and importance of the activities or works in relation to which the closure is sought;
 - (b) the limitations of available materials or technology relevant to the activities or works;
 - (c) any danger or detriment to users of the river and highways which will or may result if the works or activities are not carried out as proposed;
 - (d) any potential consequences to the users of the river for business and recreational purposes;
 - (e) any potential material damage to the business of Great Yarmouth Port Company; and
 - (f) any other matter or factors which are material in all the circumstances.
- (7) Before exercising the powers conferred by paragraphs (2) and (4) the undertaker must (except where exercising the power conferred by paragraph (4) in a case of emergency)—
- (a) publish notice of the temporary closure in Lloyd’s List and on a website maintained by the undertaker; and
 - (b) display notice of the temporary closure for the minimum period in a conspicuous position adjacent to the area of the closure from the date of the notice published under subparagraph (a) above.
- (8) Following consultation with the GYPA under paragraph (2) or (as the case may be) the grant of the GYPA’s consent under paragraph (4), the GYPA must as soon as practicable upon the undertaker’s request issue a notice to mariners giving the commencement date and anticipated duration of the relevant temporary closure.
- (9) Except in a case of emergency, the period between the publication of a notice required by paragraph (7)(a) and the commencement date of the closure to which it relates must not be less than the minimum period.
- (10) Where the undertaker exercises the powers conferred by this article in a case of emergency, the undertaker must as soon as practicable display notice of the temporary closure in a conspicuous position adjacent to the area of the closure.
- (11) In this article and in article 24 (removal of vessels) “emergency” means any circumstance existing or imminent which the undertaker considers is likely to cause danger to—
- (a) any person or property, including the new bridge, any vessel and any person using, working on, or intending to use or work on the new bridge or aboard any vessel passing the new bridge; or
 - (b) the environment.
- (12) In this article—
- “Great Yarmouth Port Company” means Great Yarmouth Port Company Ltd (company number 05971330) of Maritime Centre, Port of Liverpool, Liverpool, L21 1LA;
- “the minimum period” means—
- (i) 21 days in the case of a closure of the entire width of the river Yare;
 - (ii) 14 days in the case of a partial reduction in the width of the river Yare.

Removal of vessels

24.—(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, or to enable vessels to navigate through the river Yare, it may by written direction require the GYPA to remove from the river Yare any vessel that is—

- (a) sunk, stranded or abandoned; or

(b) moored or laid up (whether lawfully or not),
to another place within Great Yarmouth Port where it may without injury to the vessel be moored or laid.

(2) The GYPA must comply with a direction issued by the undertaker under paragraph (1) within such period as is specified in the notice.

(3) Before exercising the powers conferred by paragraph (1), the undertaker must, except in case of emergency—

- (a) publish a notice of its intention to do so in Lloyd’s List and once in each of 2 successive weeks in a local newspaper published or circulating in the borough of Great Yarmouth;
- (b) display notice thereof in a conspicuous position adjacent to the vessel from the date on which the first notice is published in a local newspaper in accordance with sub-paragraph (a) for a period of at least 7 days from the date on which the second notice is published in a local newspaper in accordance with sub-paragraph (a); and
- (c) consult the harbour master.

(4) Each notice published or displayed under paragraph (3) must—

- (a) specify the vessel and the part of the river Yare to which the notice relates;
- (b) state the reason for the undertaker’s intention to require the GYPA to remove the specified vessel from the specified part of the river Yare;
- (c) specify a date, which must be a date not earlier than one month after the last date on which a notice is published under paragraph (3) by which the specified vessels must be removed from the specified part of the river Yare specified in the notice;
- (d) state that if the owner or master of any vessel of the specified description within the specified part of the river Yare does not remove that vessel on or before the date specified in accordance with sub-paragraph (c), the undertaker may direct the GYPA to remove the vessel; and
- (e) summarise the effect of paragraph (6) of this article.

(5) The undertaker must pay to the GYPA all costs and expenses reasonably incurred by the GYPA in discharging its duties under this article.

(6) Subject to paragraph (7), the undertaker may recover as a debt from the owner of any vessel removed under this article all costs and expenses incurred by the undertaker in respect of the removal of the vessel, including sums paid to the GYPA under paragraph (5).

(7) Paragraph (6) does not apply where a vessel has been removed without notice in case of emergency.

(8) The undertaker and GYPA may enter into agreements relating to the manner in which the powers of this article are to be exercised.

(9) In this article “emergency” has the meaning assigned to it by article 23(11).