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STATUTORY INSTRUMENTS

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**2020 No. 474**

**The Lake Lothing (Lowestoft) Third Crossing Order 2020**

**PART 2**

**WORKS PROVISIONS**

*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 sub-paragraphs (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.

**Commencement Information**

**II** Art. 6 in force at 21.5.2020, see [art. 1](#)

**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 <sup>M1</sup> (dual carriageways and roundabouts) of the 1980 Act or section 184 <sup>M2</sup> (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<sup>M3</sup> (directions as to timing);
- section 56A<sup>M4</sup> (power to give directions as to placing of apparatus);
- section 58<sup>M5</sup> (restrictions following substantial road works);
- section 58A<sup>M6</sup> (restriction on works following substantial street works);
- section 73A<sup>M7</sup> (power to require undertaker to re-surface street);
- section 73B<sup>M8</sup> (power to specify timing etc. of re-surfacing);
- section 73C<sup>M9</sup> (materials; workmanship and standard of re-surfacing);
- section 78A<sup>M10</sup> (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A<sup>M11</sup> (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<sup>M12</sup> referred to in paragraph (4) are—

- section 54<sup>M13</sup> (advance notice of certain works), subject to paragraph (6);
- section 55<sup>M14</sup> (notice of starting date of works), subject to paragraph (6);
- section 57<sup>M15</sup> (notice of emergency works);
- section 59<sup>M16</sup> (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);
- 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.

#### Commencement Information

- I2** Art. 7 in force at 21.5.2020, see [art. 1](#)

#### Marginal Citations

- M1** Section 64 was amended by Schedule 17 to the [Local Government Act 1985 \(c. 51\)](#) and Schedule 9 to the 1991 Act.
- M2** 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.
- M3** Section 56 was amended by section 43 of the 2004 Act.
- M4** Section 56A was inserted by section 44 of the 2004 Act.
- M5** Section 58 was amended by section 51 of the 2004 Act.
- M6** Section 58A was inserted by section 52(1) of the 2004 Act.
- M7** Section 73A was inserted by section 55(1) of the 2004 Act.
- M8** Section 73B was inserted by section 55(1) of the 2004 Act.
- M9** Section 73C was inserted by section 55(1) of the 2004 Act.
- M10** Section 78A was inserted by section 57(1) of the 2004 Act.
- M11** Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the 2004 Act.
- M12** Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the 2004 Act.
- M13** Section 54 was also amended by section 49(1) of the 2004 Act.
- M14** Section 55 was also amended by section 49(2) and 51(9) of the Traffic Management Act 2004 Act.
- M15** Section 57 was also amended by section 52(3) of the 2004 Act.
- M16** Section 59 was amended by section 42 of the 2004 Act.

#### 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.

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**Commencement Information**

**I3** Art. 8 in force at 21.5.2020, see [art. 1](#)

**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.

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**Commencement Information**

**I4** Art. 9 in force at 21.5.2020, see [art. 1](#)

## 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 to be 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).

### Commencement Information

**I5** Art. 10 in force at 21.5.2020, see [art. 1](#)

### 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.

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#### Commencement Information

**I6** Art. 11 in force at 21.5.2020, see [art. 1](#)

### 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.

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#### Commencement Information

**I7** Art. 12 in force at 21.5.2020, see [art. 1](#)

### 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 <sup>M17</sup> (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.

**Commencement Information**

**I8** Art. 13 in force at 21.5.2020, see [art. 1](#)

**Marginal Citations**

**M17** 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 \(c. 7\)](#).

**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.

**Commencement Information**

**I9** Art. 14 in force at 21.5.2020, see [art. 1](#)

**Changes to legislation:**

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