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## STATUTORY INSTRUMENTS

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# 2020 No. 474

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

### 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).

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##### **Commencement Information**

**I1** Art. 22 in force at 21.5.2020, see [art. 1](#)

##### **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.

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##### **Commencement Information**

**I2** Art. 23 in force at 21.5.2020, see [art. 1](#)

##### **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 ”.

#### Commencement Information

**I3** Art. 24 in force at 21.5.2020, see [art. 1](#)

#### 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<sup>M1</sup> (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.

#### Commencement Information

**I4** Art. 25 in force at 21.5.2020, see [art. 1](#)

#### Marginal Citations

**M1** [Section 4](#) was amended by sections 184, 185 and Schedule 18 paragraph 2 to the [Housing and Planning Act 2016 \(c. 22\)](#).

#### 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<sup>M2</sup> (other provisions as to divided land) of, and Schedule 2A<sup>M3</sup> (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.

#### Commencement Information

**I5** Art. 26 in force at 21.5.2020, see [art. 1](#)

#### Marginal Citations

**M2** [Section 8](#) was amended by paragraphs 1 and 2 of Schedule 17 to the Housing and Planning Act 2016 and [S.I. 2009/1307](#).

**M3** [Schedule 2A](#) was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016.

### 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 (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)<sup>M4</sup> (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.

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**Commencement Information**

**I6** Art. 27 in force at 21.5.2020, see [art. 1](#)

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**Marginal Citations**

**M4** [Section 153\(4A\)](#) was inserted by section 200(2) of the [Housing and Planning Act 2016 \(c. 22\)](#).

**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—

- (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.

#### **Commencement Information**

**I7** Art. 28 in force at 21.5.2020, see [art. 1](#)

#### **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.

#### Commencement Information

**I8** Art. 29 in force at 21.5.2020, see [art. 1](#)

### 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.

#### Commencement Information

**I9** Art. 30 in force at 21.5.2020, see [art. 1](#)

### 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 <sup>M5</sup> (time limit for general vesting declaration).

(6) In section 5B <sup>M6</sup> (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 <sup>M7</sup> (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 <sup>M8</sup> (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 <sup>M9</sup> (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 <sup>M10</sup> (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.

#### Commencement Information

**I10** Art. 31 in force at 21.5.2020, see [art. 1](#)

#### Marginal Citations

**M5** [Section 5A](#) was inserted by section 182(2) of the Housing and Planning Act 2016.

**M6** [Section 5B](#) was inserted by section 202(2) of Schedule 3 to the Housing and Planning Act 2016.

**M7** [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 \(c. 2\)](#).

**M8** [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.

**M9** [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](#).

**M10** Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

#### 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) <sup>M11</sup> (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 ”.

(3) In section 11A <sup>M12</sup> (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” inset “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.”

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#### Commencement Information

**I11** Art. 32 in force at 21.5.2020, see [art. 1](#)

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#### Marginal Citations

- M11** [Section 4A](#) was inserted by section 202(1) of the Housing and Planning Act 2016.  
**M12** [Section 11A](#) was inserted by section 186(3) of the Housing and Planning Act 2016.



**Changes to legislation:**

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