

Draft Order laid before Parliament under section 77(2) of the Deregulation and Contracting Out Act 1994, for approval by resolution of each House of Parliament.

This draft Order replaces the Contracting Out (Highway Functions) Order 2008 laid in draft before Parliament on the 11th December 2008 and is being issued free of charge to all known recipients of that Order.

DRAFT STATUTORY INSTRUMENTS

2009 No. 000

CONTRACTING OUT

The Contracting Out (Highway Functions) Order 2009

<i>Made</i>	- - - -	2009
<i>Coming into force</i>	- -	2009

The Secretary of State for Transport makes the following Order in exercise of the powers conferred by sections 69, 70 and 77(1) of the Deregulation and Contracting Out Act 1994(1).

In relation to the exercise of powers under section 70 of that Act, the Secretary of State has, as required by section 70(3), consulted with such representatives of local government as the Secretary of State considered appropriate.

In accordance with section 77(2) of that Act, a draft of this Order was laid before, and approved by a resolution of, each House of Parliament.

Citation and commencement

1. This Order may be cited as the Contracting Out (Highway Functions) Order 2009 and shall come into force on the tenth day after the day on which it is made.

Interpretation

2.—(1) In this Order—

(1) 1994 c.40. Section 70 is applied in relation to functions of a best value authority by section 18 of the Local Government Act 1999 (c.27). Section 70(1) was amended, and subsections (1ZA) and (1ZB) were inserted, by the Local Government and Public Involvement in Health Act 2007 (c.28) (“the 2007 Act”), section 239(1). Subsection (1) is prospectively amended by the Greater London Authority Act 1999 (c.29) (“the 1999 Act”), section 423 and Schedule 34, Part IX. Subsection (6) was inserted by the 1999 Act, section 40(1) and (3). Subsections (1A) and (7) were inserted in relation to England by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and other Provisions) (England) Order 2001 (S.I. 2001/2273), articles 2(o) and 29(a) and (b). They were inserted in relation to Wales by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and other Provisions) (Wales) Order 2002 (S.I. 2002/808), articles 2(n) and 28(a) and (b). Section 79(1) contains definitions of “Minister” and “local authority”. The definition of the latter was amended, and sections 79A, 79B and 79C were inserted, by the 2007 Act, section 239(2) and (3). Section 79(2) is prospectively repealed by the 2007 Act, section 241 and Schedule 18, Part 19. Section 79(3)(a) and (b) were substituted, and section 79(4) was amended, by the Charities Act 2006 (c.50), section 75(1) and Schedule 8, paragraphs 179(1), (2) and (3).

“the 1980 Act” means the Highways Act 1980(2);

“the 1991 Act” means the New Roads and Street Works Act 1991(3);

“the 1995 Order” means the Contracting Out (Highway Functions) Order 1995(4);

“the 1999 Order” means the Local Authorities (Contracting Out of Highway Functions) Order 1999(5);

“the 2001 Order” means the Local Authorities (Contracting Out of Highway Functions) (England) Order 2001(6);

“highway” has the meaning given in section 328 of the 1980 Act;

“highway authority” has the meaning given in section 1(7) of the 1980 Act;

“highway connected land” means land which does not form part of a highway but which has been acquired by the Secretary of State or a local highway authority, in connection with a highway, under section 239(1) or (4) or section 246 of the 1980 Act or otherwise;

“local highway authority” has the meaning given in section 329(1) of the 1980 Act; and

“street works” has the meaning given in section 48(3) of the 1991 Act.

(2) In Schedule 1, any expression used in a reference to a provision of the 1980 Act has the same meaning as it has in that Act.

(3) In Schedule 2, any expression used in a reference to a provision of the 1991 Act has the same meaning as it has in that Act.

Contracting out of functions

3.—(1) Any function of the Secretary of State which is listed in Schedule 1, 2 or 3 may be exercised by, or by employees of, such person (if any) as may be authorised to do so by the Secretary of State.

(2) Any function of a local authority which is listed in any of those Schedules may be exercised by, or by employees of, such person (if any) as may be authorised to do so by the authority whose function it is.

(2) 1980 c.66. All functions of a Minister of the Crown under this Act (“the 1980 Act”), except the Treasury function under section 327(4), functions exercisable by the Secretary of State under section 329(5) and functions exercisable by the Secretary of State in relation to that part of the M4 Motorway in Wales which comprises “the New Toll Plaza area” and “the New Bridge”, as defined in the Severn Bridges Act 1992 (c.3), section 39(1), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1. Following the repeal of the Government of Wales Act 1998 (c.38), sections 22 and 155(2), that Order has effect as if made under the Government of Wales Act 2006 (c.32) (“the 2006 Act”), sections 58 and 158(3), by virtue of Schedule 11, paragraph 26(1) and (3), to that Act. The functions of the National Assembly for Wales under the 1980 Act are transferred to the Welsh Ministers by virtue of the 2006 Act, schedule 11, paragraph 30.

(3) 1991 c.22. All functions of a Minister of the Crown under this Act (“the 1991 Act”), except section 167(3), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672), article 2 and Schedule 1. That Order has effect as set out in footnote (a) and the functions of the National Assembly for Wales under the 1991 Act are transferred to the Welsh Ministers in the same manner as set out in that footnote.

(4) S.I. 1995/1986.

(5) S.I. 1999/2106.

(6) S.I. 2001/4061.

(7) Section 1(1)(aa) was inserted by the New Roads and Street Works Act 1991 (c.22), section 21(2). Section 1(2), (3) and (4) were amended by the Local Government Act 1985 (c.51), sections 8 and 102 and Schedule 4, Part I, paragraph 1(a), (b) and (c) and Schedule 17. Subsection (3) was also amended by the Greater London Authority Act 1999 (c.29) (“the 1999 Act”), section 259(1) and (3). Subsection (2A) was inserted by the 1999 Act, section 259(1) and (2) and subsection (3A) was inserted by the Local Government (Wales) Act 1994 (c.19) (“the 1994 Act”), section 22(1), and Schedule 7, Part I, paragraph 1(1) and (2). Subsection (5) was inserted by the 1994 Act, section 22(1) and Schedule 7, Part I, paragraph 1(1) and (3).

Revocation and transitional provisions

4.—(1) Subject to paragraphs (3) and (4), the provisions of the 1995 Order, other than those mentioned in paragraph (2), are revoked.

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

- (a) article 1(1);
- (b) the definition of “the 1980 Act” in article 1(2); and
- (c) article 3.

(3) This paragraph applies in relation to any street works of which notice has been given to the Secretary of State, as the street authority for a street(8), under section 54(1), 55(1) or 57 of the 1991 Act before 1st April 2008.

(4) Where paragraph (3) applies—

- (a) paragraphs 1(o), 11 and 12 of Schedule 2 (and article 3(1) insofar as it relates to them) have no effect; and
- (b) paragraphs 1(l) and 10 of Schedule 2 to the 1995 Order (and article 2 of that Order insofar as it relates to them) shall continue to have effect(9).

(5) Subject to paragraphs (6) and (7), the 1999 Order is revoked.

(6) This paragraph applies in relation to any street works of which notice has been given to a local highway authority, as the street authority for a street, under section 54(1), 55(1) or 57 of the 1991 Act before 1st April 2008.

(7) Where paragraph (6) applies—

- (a) paragraphs 1(o), 11 and 12 of Schedule 2 (and article 3(2) insofar as it relates to them) have no effect; and
- (b) paragraphs 1(1) and 10 of Schedule 2 to the 1999 Order (and article 2 of that Order insofar as it relates to them) shall continue to have effect(10).

(8) The 2001 Order is revoked.

(9) Subject to paragraph (10), article 3 (contracting out of highway functions) of the Transport for London (Best Value) (Contracting Out of Investment and Highway Functions) Order 2006(11) is revoked.

(10) Notwithstanding the revocation of article 3 of that Order, anything done, or having effect as if done, under that article shall continue to have effect.

(8) Section 48(1) of the New Roads and Street Works Act 1991 (c.22) contains a definition of “street” and section 49(1) contains a definition of “street authority”.

(9) See regulation 19 (transitional arrangements) of both the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 (S.I. 2007/1951) and the Street Works (Registers, Notices, Directions and Designations) (Wales) Regulations 2008 (S.I. 2008/101 (W.14)) and article 8 (duty to notify street authority of reinstatement) of the Traffic Management Act 2004 (Commencement No.4 and Transitional Provisions) (England) Order 2007 (S.I. 2007/1890 (C.71)) and article 9 of the Traffic Management Act 2004 (Commencement No.2 and Transitional Provisions) (Wales) Order 2007 (S.I. 2007/3174 (W.279) (C.130)).

(10) See footnote (b).

(11) S.I. 2006/91. This Order (“the 2006 Order”) was made under section 70 of the Deregulation and Contracting Out Act 1994 (c.40) as applied by section 18 of the Local Government Act 1999 (c.27) to a best value authority. Transport for London was a best value authority for the purposes of Part 1 of that Act, by virtue of section 1. Article 6(6) of the Local Government and Public Involvement in Health Act 2007 (Commencement No.5 and Transitional, Saving and Transitory Provision) Order 2008 (S.I. 2008/917 (C.44)) provided that notwithstanding the coming into force of section 239 of the Act, the 2006 Order would continue to apply as if section 239(5) had not been commenced.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a
UK Statutory Instrument: The Contracting Out (Highway Functions) Order 2009 No. 721

Signed by authority of the Secretary of State for Transport

Date

Department for Transport

SCHEDULE 1

Article 3

FUNCTIONS CONFERRED BY OR UNDER THE 1980 ACT OR REGULATIONS MADE UNDER THAT ACT

1. Subject to paragraph 9 and except as provided in sub-paragraphs (d), (x), (jj) and (mm), functions conferred on the Secretary of State or a local highway authority, as the highway authority⁽¹²⁾ for a highway, in relation to that highway or to highway connected land, by or under any of the following provisions of the 1980 Act—

- (a) section 41(1) and (1A)⁽¹³⁾ (duty to maintain highways maintainable at public expense);
- (b) section 62⁽¹⁴⁾ (general power of improvement);
- (c) section 64⁽¹⁵⁾ (dual carriageways and roundabouts);
- (d) section 65 (cycle tracks), but not including the functions of a local highway authority;
- (e) section 66⁽¹⁶⁾ (footways and guard-rails etc for publicly maintainable highways);
- (f) section 68 (refuges);
- (g) section 69(1)⁽¹⁷⁾ (subways);
- (h) section 70 (footbridges over highways);
- (i) section 71 (margins for horses and livestock);
- (j) section 75(1) and (2) (variation of widths of carriageways and footways);
- (k) section 76 (levelling of highways);
- (l) section 77 (alteration of levels);
- (m) section 78 (cutting off of corners);
- (n) section 80(1), (2), and (3)⁽¹⁸⁾ (power to fence highways);
- (o) section 81 (provision of highway boundary posts);
- (p) section 84 (maintenance of cattle-grids and by-passes);
- (q) section 90 (protection of bridges and railways);
- (r) section 90G⁽¹⁹⁾ (powers to carry out traffic calming works);
- (s) section 90GA(2) and (3)⁽²⁰⁾ (special procedure for certain traffic calming works in London);

(12) The Secretary of State is the highway authority for certain highways by virtue of the Highways Act 1980 (c.66), sections 1(1) and 329 and the Transfer of Functions (Transport) Order 1981 (S.I. 1981/238), article 2. A local highway authority is the highway authority for certain highways by virtue of sections 1(2) to (5) and 329 of that Act.

(13) Section 41(1A) was inserted by the Railways and Transport Safety Act 2003 (c.20), section 111.

(14) Section 62(3)(ff) was inserted by the Transport Act 1981 (c.56), section 32(1) and Schedule 10, Part I, paragraph 1, and section 62(3)(fg) was inserted by the Traffic Calming Act 1992 (c.30), section 1(1). Sub-section (5) was repealed by the Local Government Act 1985 (c.51), section 102 and Schedule 17.

(15) Section 64(4) was repealed by the Local Government Act 1985 (c.51), section 102 and Schedule 17, and section 64(5) was repealed by the New Roads and Street Works Act 1991 (c.22), section 168(2) and Schedule 9.

(16) Section 66(3) was amended by the Countryside and Rights of Way Act 2000 (c.37), section 70(1), and section 66(6) was amended by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part I, paragraph 17.

(17) Section 69(2)(b) was repealed by the Local Government Act 1985 (c.51), section 102 and Schedule 17, and section 69(3) was amended by the Local Government (Wales) Act 1994 (c.19), section 22(1) and Schedule 7, Part I, paragraph 7.

(18) Section 80 is to be read with section 72(12) of the Wildlife and Countryside Act 1981 (c.69). Subsection (3)(c) was amended by the Planning (Consequential Provisions) Act 1990 (c.11), section 4 and Schedule 2, paragraph 45(4), and subsection (4) was amended by the Local Government Act 1985 (c.51), sections 8 and 102 and Schedule 4, Part I, paragraph 19 and Schedule 17.

(19) Section 90G was inserted by the Traffic Calming Act 1992 (c.30), section 1(2) and Schedule 1. Subsections (1) and (2) were amended by the Greater London Authority Act 1999 (c.29), section 269(1), (2) and (3). Section 90G is to be read with section 90GA.

(20) Section 90GA was inserted by the Greater London Authority Act 1999 (c.29), section 269(1) and (4). Section 90GA(1)(b) was amended, and section 90GA(4) inserted, by the Greater London Authority (Miscellaneous Amendments) Order 2000 (S.I. 2000/1435), article 2 and the Schedule, Part I, paragraphs 1 and 7(1) to (4).

- (t) section 92 (reconstruction of bridge maintainable at public expense);
- (u) section 96 (powers of highway and local authorities to plant trees, lay out grass verges etc);
- (v) section 97 (lighting of highways);
- (w) section 99 (metalling of highways);
- (x) section 100(1) to (5)(**21**), (6)(**22**) and (6B)(**23**) (drainage of highways), except insofar as they relate to the power to enter premises under section 168 of the Water Industry Act 1991(**24**) (entry for works purposes);
- (y) section 101 (power to fill in roadside ditches etc);
- (z) section 102 (provision of works for protecting highways against hazards of nature);
- (aa) section 103 (provision of posts to indicate depth of flood water);
- (bb) section 104 (mitigating nuisance of dust);
- (cc) section 105 (power to improve road-ferries);
- (dd) section 114(**25**) (provision of public conveniences by county council for users of roads for which the Council is the highway authority);
- (ee) section 115H(1)(**26**) (duties to consult or obtain consent of other authorities);
- (ff) section 133 (damage to footways of streets by excavations);
- (gg) section 139(1) and (2) (control of builders' skips);
- (hh) section 140(2) (removal of builders' skips);
- (ii) section 141(2) (restriction on planting of trees etc in or near carriageway);
- (jj) section 150(1), (2) and (4) (duty to remove snow, soil etc from highway), except insofar as they relate to an obstruction in a highway which is the property of any person;
- (kk) section 167(2), (5) and (6) (powers relating to retaining walls near streets);
- (ll) section 169(1), (2), (3) and (4)(**27**) (control of scaffolding on highways);
- (mm) section 171 (control of deposit of building materials and making of excavations in streets), except insofar as the functions conferred by or under section 171(7) relate to the removal of the property of any person; and

-
- (21) Section 100(5), which, for the purpose of the drainage of a highway, confers on a highway authority certain powers of a sewerage authority under the Water Industry Act 1991 (c.56), was amended by the Water Act 1989 (c.15), section 190(1) and Schedule 25, paragraph 62(4)(a) and by the Water Consolidation (Consequential Provisions) Act 1991 (c.60), section 2(1) and Schedule 1, paragraph 36(1).
 - (22) Section 100(6) was amended by the Water Act 1989 (c.15), section 190(1) and Schedule 25, paragraph 62(4)(b); by the Water Consolidation (Consequential Provisions) Act 1991 (c.60), section 2(1) and Schedule 1, paragraph 36(1) and by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part I, paragraph 21.
 - (23) Section 100(6B) was inserted by the Local Government (Wales) Act 1994 (c.19), section 22(1) and Schedule 7, Part I, paragraph 9.
 - (24) 1991 c.56.
 - (25) Section 114(1) and (3) were amended by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part I, paragraph 22; section 114(2A) and (2B) were inserted by the Local Government (Wales) Act 1994 (c.19), section 22(1) and Schedule 7, Part I, paragraph 10, and section 114(4) was amended by the Building Act 1984 (c.55), section 133(2) and Schedule 7.
 - (26) Section 115H was inserted by the Local Government (Miscellaneous Provisions) Act 1982 (c.30), section 20 and Schedule 5, Part I, paragraph 1. Subsection (1) was amended by the Local Government Act 1985 (c.51) ("the 1985 Act"), section 8 and Schedule 4, Part I, paragraph 23 and by the Planning (Consequential Provisions) Act 1990 (c.11), section 4 and Schedule 2, paragraph 45(7). Subsection (2) was repealed by the 1985 Act, section 102 and Schedule 17. Subsection (3) was amended by the 1985 Act, section 8 and Schedule 4, Part I, paragraph 23. Subsection (4) was amended by the Transport for London (Consequential Provisions) Order 2003 (S.I. 2003/1615), article 2 and Schedule 1, Part 1, paragraph 7(1) and (3).
 - (27) Section 169(4) was amended by the Postal Services Act 2000 (Consequential Modifications No.1) Order 2001 (S.I. 2001/1149), article 3(1) and Schedule 1, paragraph 49(1) and (3), the Telecommunications Act 1984 (c.12), section 109(6) and Schedule 7, Part I and by the Water Act 1989 (c.15), section 190(3) and Schedule 27, Part I. It was also amended by the New Roads and Street Works Act 1991 (c.22), section 168(1) and Schedule 8, Part I, paragraph 4, the Telecommunications Act 1984 (c.12), section 109(1) and Schedule 4, paragraph 76(8), the Communications Act 2003 (c.21), section 406(1) and Schedule 17, paragraph 56(1)(b) and (2)(a) and by the Road Traffic (Driver Licensing and Information Systems) Act 1989 (c.22), section 13(1) and Schedule 4, paragraph 3(1) and (7).

(nn) section 178(1) (restriction on placing rails, beams etc over highways).

2. Subject to paragraph 9, functions conferred on the Secretary of State by or under any of the following provisions of the 1980 Act—

- (a) section 63 (relief of main carriageway of trunk road from local traffic); and
- (b) section 112(3) and (5)(28) (provision of picnic sites and public conveniences for users of trunk roads), except insofar as the functions in subsection (5) relate to the provision of public sanitary conveniences.

3. Subject to paragraph 9, functions conferred on the Secretary of State or a local highway authority, by or under section 288(29) of the 1980 Act (power to require gas and water pipes to be moved), insofar as that provision applies to the exercise of any other function listed in this Schedule.

4. Subject to paragraph 9, functions conferred on the Secretary of State or a local highway authority, as a competent authority, by virtue of their being the highway authority for a highway, by or under any of the following provisions of the 1980 Act—

- (a) section 143(1)(30) (power to remove structures from highways);
- (b) section 154(1) and (2)(31) (cutting or felling etc trees etc that overhang or are a danger to roads or footpaths); and
- (c) section 185(32) (power to install refuse or storage bins in streets).

5. Functions conferred on a local authority by section 144(4)(b)(33) of the 1980 Act (power to erect flagpoles etc on highways).

6. Functions conferred on a local authority by section 167(5) of the 1980 Act (powers relating to retaining walls near streets), insofar as that authority is a local highway authority.

7. Functions conferred on a London borough council by or under section 301A(2) and (3)(34) of the 1980 Act (London borough council exercising powers so as to affect another authority's roads), insofar as those provisions apply to the exercise of any other function listed in this Schedule.

8. Functions conferred on the Secretary of State or a local highway authority, as the highway authority for a highway, by or under any of the following provisions of the Walkways Regulations 1973(35)—

- (a) regulation 3(1) (modification of statutory provisions);
- (b) regulation 4(1) (rights of statutory undertakers etc);
- (c) regulation 5(3) (periodic and temporary closure of walkways); and
- (d) regulation 6 (stopping up of walkway by building owner).

(28) Section 112(3) and (5) were amended by the Road Safety Act 2006 (c.49), sections 55(b) and (d) and 59 and Schedule 7.

(29) In relation to section 288, the Public Utilities Street Works Act 1950 (c.39) was repealed by the New Roads and Street Works Act 1991 (c.22), section 168(2) and Schedule 9. Provisions relating to relations between an authority carrying out road alterations and undertakers whose apparatus is affected are now contained in sections 83 to 85 of that Act.

(30) Section 143(1)(a) was amended by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part I, paragraph 25.

(31) Section 154(1) was amended by the Countryside and Rights of Way Act 2000 (c.37), section 65 and by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part I, paragraph 27.

(32) Section 185(1) was amended by the Local Government (Wales) Act 1994 (c.19), section 22(1) and Schedule 7, Part I, paragraph 16. Subsection (3)(b) was amended by the Water Act 1989 (c.15), section 190(1) and Schedule 25, paragraph 62(7) and by the Postal Services Act 2000 (Consequential Modifications No.1) Order 2001 (S.I. 2001/1149) (“the 2000 Order”), article 3(1) and Schedule 1, paragraph 49(1) and (7)(a). Subsection (3A) was inserted by the 2000 Order, article 3(1) and Schedule 1, paragraph 49(1) and (7)(b).

(33) The definition of “local authority” in section 144(6) was amended by the Local Government Act 1985 (c.51), section 102 and Schedule 17.

(34) Section 301A was inserted by the Greater London Authority Act 1999 (c.29), section 266. Subsection (3)(a) was amended by the Traffic Management Act 2004 (c.18), section 62(1) and (3).

(35) S.I. 1973/686, as amended by S.I. 1974/735 and 2001/1149. These Regulations have effect as if made under section 35 of the Highways Act 1980 (c.66).

9.—(1) Paragraphs 1 to 4 shall not include—

- (a) any function conferred by or under section 294 of the 1980 Act (entry, etc, of premises by highway authority or council for certain purposes);
- (b) any function of the Secretary of State to the extent that the function confers a power or right of entry into or on any premises or land of which the Secretary of State is not the owner or occupier; or
- (c) any function of a local highway authority to the extent that the function confers a power or right of entry into or on any premises or land of which the local highway authority is not the owner or occupier.

(2) Where section 338 of the 1980 Act (saving for works, etc, of dock, harbour and canal undertakers) or 339 of that Act⁽³⁶⁾ (saving for works etc of drainage authorities etc) applies to the exercise of any functions listed in paragraphs 1 to 4, those functions shall be construed as including any additional requirements imposed by those sections.

SCHEDULE 2

Article 3

FUNCTIONS CONFERRED BY OR UNDER THE 1991
ACT OR REGULATIONS MADE UNDER THAT ACT

1. Functions conferred on the Secretary of State or a local highway authority, as the street authority for a street, by or under any of the following provisions of the 1991 Act—

- (a) section 53⁽³⁷⁾ (the street works register);
- (b) section 54(1), (4), (4A) and (4B)⁽³⁸⁾ (advance notice of certain works);
- (c) section 55(1), (4) and (8)⁽³⁹⁾ (notice of starting date of works);
- (d) section 56(1), (1A) and (4)⁽⁴⁰⁾ (power to give directions as to timing of street works);
- (e) section 56A(1), (3) and (8)⁽⁴¹⁾ (power to give directions as to placing of apparatus);
- (f) section 57(2)⁽⁴²⁾ (notice of emergency works);
- (g) section 58⁽⁴³⁾ (restriction on works following substantial road works);
- (h) section 58A and Schedule 3A, paragraphs 1(1), 2(1) and (4), 3(1) and 4(1), (6), (8), (9) and (10), and 5(2)(b) and (3)⁽⁴⁴⁾ (restriction on works following substantial street works);
- (i) section 59⁽⁴⁵⁾ (general duty of street authority to co-ordinate works);
- (j) section 60(1) (general duty of undertakers to co-operate);

⁽³⁶⁾ Section 339(1) and (4) were amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996 (S.I. 1996/593), regulation 2 and Schedule 1 and by the Water Consolidation (Consequential Provisions) Act 1991 (c.60), section 2 and Schedule 1, paragraph 36(2). Subsection (1) was also amended by the Water Act 1989 (c.15), section 190(1) and Schedule 25, paragraph 62(13).

⁽³⁷⁾ Section 53 is prospectively amended by the Traffic Management Act 2004 (c.18), section 45.

⁽³⁸⁾ Section 54(4A) and (4B) were inserted by the Traffic Management Act 2004 (c.18), section 49(1)(b).

⁽³⁹⁾ Section 55(8) was inserted by the Traffic Management Act 2004 (c.18), section 49(2). There are other amendments and prospective amendments which are not relevant to this Order.

⁽⁴⁰⁾ Section 56(1) was amended by the Traffic Management Act 2004 (c.18), section 43(1) and (2). Subsection (1A) was inserted by section 43(1) and (3) of that Act. There are other amendments and prospective amendments which are not relevant to this Order.

⁽⁴¹⁾ Section 56A was inserted by the Traffic Management Act 2004 (c.18), section 44.

⁽⁴²⁾ Section 57(2) was amended by the Traffic Management Act 2004 (c.18), section 52(3)(b).

⁽⁴³⁾ Section 58 was amended by the Traffic Management Act 2004 (c.18), sections 40(1) and (2) and 51 and Schedule 1.

⁽⁴⁴⁾ Section 58A and Schedule 3A were inserted by the Traffic Management Act 2004 (c.18), section 52(1) and (2).

⁽⁴⁵⁾ Section 59 was amended and is prospectively amended by the Traffic Management Act 2004 (c.18), section 42.

- (k) section 61(protected streets), except for sub-paragraph (b) in the second paragraph of subsection (1);
 - (l) section 65(5) (safety measures);
 - (m) section 66(3) and (4) (avoidance of any unnecessary delay or obstruction);
 - (n) section 68(1) (facilities to be afforded to street authority);
 - (o) section 70(3) and (4A)(46) (duty of undertaker to reinstate);
 - (p) section 72(47) (powers of street authority in relation to reinstatement);
 - (q) section 75(48) (inspection fees);
 - (r) section 81 (duty to maintain apparatus);
 - (s) section 82(1) (liability for damage or loss caused);
 - (t) section 87(4) (prospectively maintainable highways); and
 - (u) section 94(1) and (2) (power of street authority or district council to undertake street works).
2. Functions conferred on the Secretary of State or a local highway authority, as the traffic authority(49) for a highway, by section 65(2) of the 1991 Act (safety measures).
3. Functions conferred on the Secretary of State or a local highway authority, as a relevant authority, other than a street authority, by or under any of the following provisions of the 1991 Act—
- (a) section 81 (duty to maintain apparatus); and
 - (b) section 82(1) (liability for damage or loss caused).
4. Functions conferred on the Secretary of State or a local highway authority, as the highway authority for a highway or as the bridge authority for a bridge, by or under any of the following provisions of the 1991 Act—
- (a) section 83(50) (works for road purposes likely to affect apparatus in the street);
 - (b) section 84(1), (3) and (4) (measures necessary where apparatus affected by major works);
 - (c) section 85(1) and (3) (sharing of cost of necessary measures); and
 - (d) section 88(4)(51) and (5) (bridges, bridge authorities and related matters).
5. Functions conferred on the Secretary of State or a local highway authority, as the responsible authority, by or under section 90 of the 1991 Act(52) (provisions as to reinstatement of sewers, drains or tunnels).
6. Functions conferred on the Secretary of State or a local highway authority, as the street authority for a street, by or under any of the following—
- (a) regulation 3 of the Street Works (Inspection Fees) (England) Regulations 2002(53) (undertaker required to pay the street authority a fee for each chargeable inspection carried out by the street authority in England); and

(46) Section 70(3) was substituted, and (4A) inserted, by the Traffic Management Act 2004 (c.18), section 54(1) and (3). Subsections (3) and (4A) were further amended by the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 (S.I. 2007/1951), regulation 17 and the Street Works (Registers, Notices, Directions and Designations) (Wales) Regulations 2008 (S.I. 2008/101 (W.14)), regulation 17.

(47) Section 72 is prospectively amended by the Traffic Management Act 2004 (c.18), sections 53(1) and 58(1).

(48) Section 75 is prospectively substituted by the Traffic Management Act 2004 (c.18), section 58(2).

(49) Section 105(1) of the New Roads and Street Works Act 1991 (c.22) contains a definition of “traffic authority”.

(50) Section 83(3) was amended by the Traffic Management Act 2004 (c.18), section 40(1) and (2) and Schedule 1.

(51) Section 88(4) was amended by the Traffic Management Act 2004 (c.18), section 52(6).

(52) Section 90 is prospectively amended by the Traffic Management Act 2004 (c.18), section 53(2).

(53) S.I. 2002/2092, as amended by S.I. 2004/572, 2007/584 and 2008/589.

- (b) regulation 3 of the Street Works (Inspection Fees) (Wales) Regulations 2006⁽⁵⁴⁾ (undertaker required to pay the street authority a fee for each chargeable inspection carried out by the street authority in Wales).

7. Functions conferred on the Secretary of State or a local highway authority, as the street authority for a street, by or under regulation 3 of the Street Works (Reinstatement) Regulations 1992⁽⁵⁵⁾ (street authority's power to give notice affecting the standard of reinstatement required).

8. Functions conferred on the Secretary of State or a local highway authority, as the highway authority for a highway, as the bridge authority for a bridge or, in the case of a local highway authority, as the transport authority for a transport undertaking, by or under any provision of—

- (a) the Street Works (Sharing of Costs of Works) (England) Regulations 2000⁽⁵⁶⁾; and
(b) the Street Works (Sharing of Costs of Works) (Wales) Regulations 2005⁽⁵⁷⁾.

9. Functions conferred on the Secretary of State or a local highway authority, as the street authority for a street, under regulation 3 or 4 of the Street Works (Maintenance) Regulations 1992⁽⁵⁸⁾ (street authority's power to execute works to enable it to inspect an undertaker's apparatus and to execute any emergency works needed).

10. Functions conferred on the Secretary of State or a local highway authority, as the highway authority for a highway, under any provision of the Street Works Register (Registration Fees) Regulations 1999⁽⁵⁹⁾ (undertaker to pay the appropriate highway authority a fee on the registration of prescribed information).

11. Functions conferred on the Secretary of State or a local highway authority, as the street authority for a street in England, the highway authority for a highway in England or the bridge authority for a bridge in England by or under any of the following provisions of the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007⁽⁶⁰⁾—

- (a) regulation 4(4) and (5) (street works registers);
(b) regulation 6 (manner of service of notices);
(c) regulation 7 (manner of service of copy notices);
(d) regulation 9(1), (2) and (3) (notice of starting date of works);
(e) regulation 10(1) and (2) (procedure for giving directions under section 56 or 56A);
(f) regulation 11(3), (5) and (9) (restriction on works following substantial road works);
(g) regulation 12(3), (4) and (7) (restriction on works following substantial street works);
(h) regulation 14(3) (designation of streets as protected);
(i) regulation 15(3) (designation of streets as having special engineering difficulties); and
(j) regulation 16(6) (designation of streets as traffic-sensitive).

12. Functions conferred on the Secretary of State or a local highway authority, as the street authority for a street in Wales, the highway authority for a highway in Wales or the bridge authority for a bridge in Wales by or under any of the following provisions of the Street Works (Registers, Notices, Directions and Designations) (Wales) Regulations 2008⁽⁶¹⁾—

⁽⁵⁴⁾ S.I. 2006/1532 (W.150), as amended by S.I. 2007/1713 (W.150) and 2008/600 (W.62).

⁽⁵⁵⁾ S.I. 1992/1689, as amended by S.I.1992/3110, in relation to England by S.I. 2002/1487 and in relation to Wales by S.I. 2006/2932 (W.265) and 2006/2934 (W.266).

⁽⁵⁶⁾ S.I. 2000/3314.

⁽⁵⁷⁾ S.I. 2005/1721 (W.133).

⁽⁵⁸⁾ S.I. 1992/1691.

⁽⁵⁹⁾ S.I. 1999/1048.

⁽⁶⁰⁾ S.I. 2007/1951.

⁽⁶¹⁾ S.I. 2008/101 (W.14).

- (a) regulation 4(4) and (5) (street works registers);
- (b) regulation 6 (manner of service of notices);
- (c) regulation 7 (manner of service of copies of notices);
- (d) regulation 9(1), (2) and (3) (notice of starting date of works);
- (e) regulation 10(1) and (2) (procedure for giving directions under section 56 or 56A);
- (f) regulation 11(3), (5) and (9) (restriction on works following substantial road works);
- (g) regulation 12(3), (4) and (7) (restriction on works following substantial street works);
- (h) regulation 14(3) (designation of streets as protected);
- (i) regulation 15(3) (designation of streets as having special engineering difficulties); and
- (j) regulation 16(6) (designation of streets as traffic-sensitive).

13. Functions conferred on the Secretary of State or a local highway authority, as the street authority for a street in England, under regulation 5(1) or (6) of the Street Works (Fixed Penalty) (England) Regulations 2007(**62**) (manner of service of a fixed penalty notice or a notice withdrawing a fixed penalty notice).

14. Functions conferred on the Secretary of State or a local highway authority, as the street authority for a street in Wales, under regulation 5(1) or (6) of the Street Works (Fixed Penalty) (Wales) Regulations 2008(**63**) (manner of service of a fixed penalty notice or a notice withdrawing a fixed penalty notice).

15. Functions conferred on the Secretary of State or a local highway authority, as the highway authority for a highway in England, by or under any of the following provisions of the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2001(**64**)—

- (a) regulation 4 (notices);
- (b) regulation 5(1) (prescribed charges and prescribed periods);
- (c) regulation 6 (estimates of duration of works); and
- (d) regulation 7 (further and revised estimates of duration of works).

SCHEDULE 3

Article 3

FUNCTIONS CONFERRED BY MISCELLANEOUS ENACTMENTS

1. Functions conferred on the Secretary of State or a local highway authority, as the highway authority for a highway, by or under section 153(**65**) of the Public Health Act 1875(**66**) (power to require gas and water pipes to be moved).

2. Functions conferred on the Secretary of State or a local highway authority, as the highway authority for a highway, by or under section 14(**67**) of the Public Health Act 1925(**68**) (public drinking fountains, seats, etc, in streets).

(62) [S.I. 2007/1952](#).

(63) [S.I. 2008/102 \(W.15\)](#).

(64) [S.I. 2001/1281](#).

(65) Section 153 is to be read with section 180 of, and paragraphs 23 and 29 of Schedule 14 to, the Local Government Act 1972 ([c.70](#)).

(66) [1875 c.55](#) (38 and 39 Vict).

(67) Section 14 is to be read with section 180 of, and paragraphs 23 and 28 of Schedule 14 to, the Local Government Act 1972 ([c.70](#)).

(68) [1925 c.71](#).

3. Functions conferred on the Secretary of State or a local highway authority, by or under section 5(1) or (2) of the Local Government (Miscellaneous Provisions) Act 1953(69) (consents to exercise of powers under section 4 (provision of omnibus shelters, etc)).
4. Functions conferred on the Secretary of State or a local highway authority, by or under section 5(1) or (2) of the Parish Councils Act 1957(70) (provisions as to consents and access).
5. Functions conferred on the Secretary of State or a local highway authority, as the highway authority for a highway, by or under any of the following provisions of the Public Health Act 1961(71)—
 - (a) section 45 (attachment of street lamps to buildings); and
 - (b) section 81(72) (summary recovery of damages for negligence).
6. Functions conferred on the Secretary of State or a local highway authority, by or under section 5(6) of, and Schedule 1 to, the Litter Act 1983(73) (litter bins in England and Wales).
7. Functions conferred on the Secretary of State or a local highway authority, as the highway authority for a highway, by or under section 72(1) of the Road Traffic Regulation Act 1984(74) (powers exercisable by parish or community councils).
8. Functions conferred on the Secretary of State or a local highway authority, as the highway authority for a highway, by or under section 4 (provision of barriers in cycle tracks, etc) or 5(1) (compensation) of the Cycle Tracks Act 1984(75).

-
- (69) 1953 c.26. All functions of a Minister of the Crown under this Act (“the 1953 Act”), except under section 8(3), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1. Following the repeal of the Government of Wales Act 1998 (c.38), sections 22 and 155(2), that Order has effect as if made under the Government of Wales Act 2006 (c.32) (“the 2006 Act”), sections 58 and 158(3), by virtue of Schedule 11, paragraph 26(1) and (3), to that Act. The functions of the National Assembly for Wales under the 1953 Act are transferred to the Welsh Ministers by virtue of the 2006 Act, Schedule 11, paragraph 30. Section 4(4) of the 1953 Act was amended by the Transport Act 1980 (c.34), section 43 and Schedule 5, Part II and by the Public Passenger Vehicles Act 1981 (c.14), section 88 and Schedule 7, paragraph 1.
- (70) 1957 c.42. Section 5(1) of this Act (“the 1957 Act”) was amended by the Road Traffic Act 1960 (c.16), section 267(1) and Schedule 18 and by the Local Government Act 1985 (c.51), section 8 and Schedule 4, Part II, paragraph 49. The Minister of Transport and Civil Aviation referred to in section 5(1) is now the Secretary of State (S.I. 1981/238). All functions of a Minister of the Crown under the 1957 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1. Following the repeal of the Government of Wales Act 1998 (c.38), sections 22 and 155(2), that Order has effect as if made under the Government of Wales Act 2006 (c.32) (“the 2006 Act”), sections 58 and 158(3), by virtue of Schedule 11, paragraph 26(1) and (3), to that Act. The functions of the National Assembly for Wales under the 1957 Act are transferred to the Welsh Ministers by virtue of the 2006 Act, Schedule 11, paragraph 30.
- (71) 1961 c.64. Sections 45 and 81 of this Act (“the 1961 Act”) are to be read with section 97(4) of the Highways Act 1980 (c.66). All functions of a Minister of the Crown under the 1961 Act, except functions exercisable as the appropriate authority under section 45 and Schedule 4 in respect of certain descriptions of buildings, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1. That Order has effect as set out in footnote (a) and the functions of the National Assembly for Wales under the 1961 Act are transferred to the Welsh Ministers in the same manner as set out in that footnote.
- (72) Section 81 was partially repealed by the Local Government Act 1985 (c.51), section 102(2) and Schedule 17.
- (73) 1983 c.35. All functions of a Minister of the Crown under this Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and schedule 1. That Order has effect as set out in footnote (a) and the functions of the National Assembly for Wales under this Act are transferred to the Welsh Ministers in the same manner as set out in that footnote.
- (74) 1984 c.27. Subject to a number of exceptions that are not relevant for the purposes of these Regulations, all functions of a Minister of the Crown under this Act (“the 1984 Act”), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1. That Order has effect as set out in footnote (a) and the functions of the National Assembly for Wales under the 1984 Act are transferred to the Welsh Ministers in the same manner as set out in that footnote.
- (75) 1984 c.38.

EXPLANATORY NOTE

(This note is not part of the Order)

Subject to transitional provisions, this Order replaces, with modifications, the Contracting Out (Highway Functions) Order 1995, the Local Authorities (Contracting Out of Highway Functions) Order 1999, the Local Authorities (Contracting Out of Highway Functions) (England) Order 2001 and article 3 of the Transport for London (Best Value) (Contracting Out of Investment and Highway Functions) Order 2006.

It continues to enable both the Secretary of State and a local authority (including Transport for London) to authorise another person, or that person's employees, to exercise certain of their functions in relation to maintenance, improvement and other dealings with highways, mainly in their respective capacities as a highway authority.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. An Explanatory Memorandum has been prepared and is available alongside the instrument on the OPSI website. The Memorandum may also be found by visiting the Department for Transport website at www.dft.gov.uk.