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## STATUTORY INSTRUMENTS

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# 2017 No. 1202

## The M20 Junction 10a Development Consent Order 2017

### PART 3

### STREETS

#### Application of the 1991 Act

**11.**—(1) Works executed 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 executed by the local highway authority, might have been carried out in exercise of the powers conferred by section 64(1) (dual carriageways and roundabouts) of the 1980 Act or section 184(2) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act references 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 executed under the powers conferred by this Order—

- section 56(3) (directions as to timing);
- section 56A(4) (power to give directions as to placing of apparatus);
- section 58(5) (restrictions following substantial road works);
- section 58A(6) (restriction on works following substantial street works); and
- Schedule 3A(7) (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 execution 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 14 (temporary stopping up and restriction of use

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- (1) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
  - (2) As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 18 of and Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22).
  - (3) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c. 18).
  - (4) Inserted by section 44 of the Traffic Management Act 2004.
  - (5) As amended by section 51 of the Traffic Management Act 2004.
  - (6) Inserted by section 52 of the Traffic Management Act 2004.
  - (7) Inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.

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>(8)</sup> referred to in paragraph (4) are—
- section 54<sup>(9)</sup>(advance notice of certain works), subject to paragraph (6);
  - section 55<sup>(10)</sup> (notice of starting date of works), subject to paragraph (6);
  - section 57<sup>(11)</sup> (notice of emergency works);
  - section 59<sup>(12)</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) Sections 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 12 (construction and maintenance of new, altered or diverted streets and other structures)—

- (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.

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#### Commencement Information

**II** Art. 11 in force at 22.12.2017, see [art. 1](#)

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

**12.**—(1) Any highway (other than a special road or a trunk road) to be constructed under this Order must be completed to the reasonable satisfaction of the local highway authority in whose area the highway lies and, unless otherwise agreed in writing with the local highway authority, the highway must be maintained by and at the expense of the local highway authority from its completion.

(2) Where a highway (other than a special road or a trunk road) is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority,

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<sup>(8)</sup> Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

<sup>(9)</sup> As also amended by section 49(1) of the Traffic Management Act 2004.

<sup>(10)</sup> As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

<sup>(11)</sup> As also amended by section 52(3) of the Traffic Management Act 2004.

<sup>(12)</sup> As amended by section 42 of the Traffic Management Act 2004.

that part of the highway must be maintained by and at the expense of the local highway authority from its completion.

(3) Where a footpath, cycle track or bridleway is altered or diverted under this Order, the altered or diverted part of the highway must be completed to the reasonable satisfaction of the local highway authority and, unless otherwise agreed in writing with the local highway authority, that part of the highway must be maintained by and at the expense of the local highway authority from its completion with the exception of the footpath to be provided on plots 3/1/b and 3/1/d, shown on the land plans and the rights of way and access plans, which must be maintained by the undertaker from its completion.

(4) In the case of a bridge constructed under this Order to carry a highway (other than a special road or a trunk road) over a special road or trunk road, the bridge must be maintained by and at the expense of the undertaker.

(5) 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 and unless otherwise agreed in writing with the street authority, 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.

(6) In any action against the undertaker in respect of loss or damage resulting from any failure by it 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.

(7) For the purposes of a defence under paragraph (6), 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.

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#### **Commencement Information**

**I2** Art. 12 in force at 22.12.2017, see [art. 1](#)

#### **Classification of roads, etc.**

**13.—**(1) The roads described in Part 1 (special roads) of Schedule 3 (classification of roads, etc.) are to be—

- (a) classified as special roads for the purpose of any enactment or instrument which refers to highways classified as special roads; and
  - (b) provided for the use of traffic of Classes I and II of the classes of traffic set out in Schedule 4 to the 1980 Act.
- (2) From the date on which the undertaker notifies the Secretary of State that the roads described in Part 1 (special roads) of Schedule 3 have been completed and are open for traffic—
- (a) the undertaker is the highway authority for those roads; and
  - (b) they are classified as trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads.
- (3) From the date on which the roads described in Part 2 (trunk roads) of Schedule 3 are completed and open for traffic, they are to become trunk roads as if they had become so by virtue of an order under section 10(2)(13) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads.
- (4) From the date on which the roads described in Part 3 (classified roads) of Schedule 3 are completed and open for traffic, they are to become classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.
- (5) From the date on which the roads described in Part 4 (unclassified roads) of Schedule 3 are completed and open for traffic, they are to become unclassified roads for the purpose of any enactment or instrument which refers to unclassified roads.
- (6) From the date on which the roads specified in Part 5 (speed limits) of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding the limit in miles per hour specified in column (3) of Part 5 of Schedule 3 along the lengths of road identified in the corresponding row of column (2) of that Part.
- (7) Unless otherwise agreed with the relevant planning authority, the footpaths, cycle tracks and footways set out in Part 8 (footpaths, cycle tracks and footways) of Schedule 3 and identified on the rights of way and access plans are to be constructed by the undertaker in the specified locations and open for use from the date on which the authorised development is open for traffic.
- (8) On such day as the undertaker may determine, the order specified in column (3) of Part 7 (revocations and variations of existing traffic regulation orders) of Schedule 3 is to be varied or revoked as specified in the corresponding row of column (4) of that Part in respect of the lengths of roads specified in the corresponding row of column (2) of that Part.
- (9) The application of paragraphs (1) to (7) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

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#### Commencement Information

**I3** Art. 13 in force at 22.12.2017, see [art. 1](#)

#### Temporary stopping up and restriction of use of streets

**14.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert or restrict the use of 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.

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(13) As amended by section 22 of the 1991 Act, and by section 1 of, and Schedule 1 to, the Infrastructure Act 2015.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article, and which is 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, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily stop up, alter, divert or restrict the use of 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 but such consent must not be unreasonably withheld or delayed.

(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 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

#### Commencement Information

**I4** Art. 14 in force at 22.12.2017, see [art. 1](#)

### Permanent stopping up and restriction of use of streets and private means of access

**15.**—(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 Schedule 4 (permanent stopping up of highways and private means of access & provision of new highways and private means of access) to the extent specified and described in column (3) of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Parts 2 and 3 of Schedule 4 (being a street or private means of access to be stopped up for which a substitute is to be provided) 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 (4) of those Parts 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 street or private means of access specified in columns (1) and (2) of Parts 1 and 4 of Schedule 4 (being a street or private means of access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street or 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; or
- (b) there is no right of access to the land from the street or private means of access concerned; or

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- (c) there is reasonably convenient access to the land otherwise than from the street or 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 of the 1961 Act.
- (7) This article is subject to article 34 (apparatus and rights of statutory undertakers in stopped up streets).

#### Commencement Information

**I5** Art. 15 in force at 22.12.2017, see [art. 1](#)

#### Access to works

**16.** The undertaker may, for the purposes of the authorised development, form and lay out 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.

#### Commencement Information

**I6** Art. 16 in force at 22.12.2017, see [art. 1](#)

#### Clearways

**17.—(1)** From such day as the undertaker may determine, except as provided in paragraph (2), no person is to cause or permit any vehicle to wait on any part of the lengths of road described in column (2) of Part 6 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 (classification of roads, etc.) where it is identified in the corresponding row of column (3) of that Part that such lengths of road are to become a clearway, except upon the direction of, or with the permission or, a uniformed constable or uniformed traffic officer.

- (2) Nothing in paragraph (1) applies—
- (a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—
    - (i) the removal of any obstruction to traffic;
    - (ii) the maintenance, improvement, reconstruction or operation of the road;
    - (iii) the laying, erection, inspection, maintenance, alteration, repair, renewal or removal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as

defined in Schedule 2 (the Telecommunications Code) to the Telecommunications Act 1984<sup>(14)</sup>; or

- (iv) any building operation or demolition;
- (b) in relation to a vehicle being used—
- (i) for police, ambulance, fire and rescue authority or traffic officer purposes;
  - (ii) in the service of a local authority, safety camera partnership or Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;
  - (iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991<sup>(15)</sup>; or
  - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000<sup>(16)</sup>; or
- (c) in relation to a vehicle waiting when the person in control of it is—
- (i) required by law to stop;
  - (ii) obliged to stop in order to avoid an accident; or
  - (iii) prevented from proceeding by circumstances outside the person’s control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in paragraph (1) for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004<sup>(17)</sup>.

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**Commencement Information**

**I7** Art. 17 in force at 22.12.2017, see [art. 1](#)

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<sup>(14)</sup> 1984 c. 12.  
<sup>(15)</sup> 1991 c. 56.  
<sup>(16)</sup> 2000 c. 26.  
<sup>(17)</sup> 2004 c. 18.

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 2 para. 3(2)(ea) inserted by [S.I. 2019/1271 art. 2\(2\)\(b\)](#)
- Sch. 2 para. 3(6) inserted by [S.I. 2019/1271 art. 2\(3\)](#)