
STATUTORY INSTRUMENTS

2022 No. 573

The M25 Junction 28 Development Consent Order 2022

**PART 3
STREETS**

Application of the 1991 Act

10.—(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 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 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, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act (including any equivalent or modified provisions in any permit scheme) do not apply to any works executed under the powers conferred by this Order—

- section 56(3) (power to give directions as to timing of street works);
- section 56A(4) (power to give directions as to placing of apparatus);
- section 58(5) (restriction on works following substantial road works);
- section 58A(6) (restriction on works following substantial street works);
- section 73A(7) (power to require undertaker to re-surface street);
- section 73B(8) (power to specify timing etc. of re-surfacing);
- section 73C(9) (materials, workmanship and standard of re-surfacing);
- section 78A(10) (contributions to costs of re-surfacing by undertaker); and

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- (1) Section 64 was 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) 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 section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.
 - (3) Section 56 was amended by sections 40 and 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (4) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
 - (5) Section 58 was amended by sections 40 and 51 of, and Schedule 1 to, the Traffic Management Act 2004.
 - (6) Section 58A was inserted by section 52 of the Traffic Management Act 2004.
 - (7) Section 73A was inserted by section 55 of the Traffic Management Act 2004.
 - (8) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
 - (9) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
 - (10) Section 78A was inserted by section 57(1) of the Traffic Management Act 2004.

Schedule 3A(11) (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 alteration, diversion or restriction of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary stopping up and restriction of use of streets), whether or not the alteration, diversion or restriction constitutes street works within the meaning of that Act.

- (5) The provisions of the 1991 Act(12) referred to in paragraph (4) are—
- section 54(13) (advance notice of certain works), subject to paragraph (6);
 - section 55(14) (notice of starting date of works), subject to paragraph (6);
 - section 57(15) (notice of emergency works);
 - section 59(16) (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, diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 11 (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 maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

(8) Subject to paragraphs (3), (9) and (10), permit schemes will apply to the construction and maintenance of the authorised development and will be used by the undertaker in connection with the exercise of any powers conferred by this Part.

(9) For the purposes of this Order a permit under a permit scheme may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions pursuant to the powers conferred by this Order.

(11) Schedule 3A was inserted by section 52(2) of, and Schedule 4 to, the Traffic Management Act 2004.

(12) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.

(13) Section 54 was amended by section 49(1) of the Traffic Management Act 2004.

(14) Section 55 was amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(15) Section 57 was amended by section 52(3) of the Traffic Management Act 2004.

(16) Section 59 was amended by section 42 of the Traffic Management Act 2004.

(10) Without restricting the undertaker's recourse to any appeal mechanism which may be available under a permit scheme the undertaker may alternatively refer the matter to arbitration under article 53 (arbitration).

(11) Any order made by the Secretary of State under section 74A(2)(17) (charge determined by reference to duration of works) of the 1991 Act for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012(18) does not have effect in relation to the construction or maintenance of the authorised development.

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

11.—(1) Any highway (other than a trunk road or special 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 between the undertaker and the local highway authority, the highway 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 highway (other than a trunk road or special 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 in whose area the highway lies and, unless otherwise agreed in writing between the undertaker and the local highway authority, be maintained by and at the expense of the local highway authority from its completion.

(3) Where a street which is not, and is not intended to be a 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, 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.

(4) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road or special road) over a trunk road or special road, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority unless otherwise agreed in writing between the undertaker and the local highway authority, and the remainder of the bridge, including the waterproofing membrane, and structure below, must be maintained by and at the expense of the undertaker.

(5) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street or other structure 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 or structure 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 or structure and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street or structure 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 or structure;

(17) Section 74A was inserted by section 255(1) of the Transport Act 2000 (c. 38) and amended by section 40 of the Traffic Management Act 2004.

(18) S.I. 2012/425, as amended by S.I. 2015/377 and S.I. 2018/215.

- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street or structure to which the action relates was likely to cause danger to users of the street or structure; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street or structure 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 or structure 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 or structure and that the competent person had carried out those instructions.

Access to works

12. The undertaker may, for the purposes of the authorised development, form and layout 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.

Temporary stopping up and restriction of use of streets

13.—(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.

(2) Without limitation on the scope of paragraph (1), the undertaker may use any street temporarily stopped up altered, diverted 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, as if it were a 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 42 days beginning with the date on which the application was made, it is deemed to have granted consent.

Use of private roads

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 and maintenance 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, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

Permanent stopping up of streets

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 specified in column (1) of Parts 1 and 2 of Schedule 3 (permanent stopping up of streets) to the extent specified and described in column (2) of that Schedule.

(2) No street specified in column (1) of Parts 1 and 2 of Schedule 3 is to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (3) 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 to be stopped up is first provided and is 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 until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street 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 as is bounded on both sides by land owned by the undertaker.

(4) 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, as if it were a dispute under Part 1 of the 1961 Act.

(5) This article is subject to article 38 (apparatus and rights of statutory undertakers in stopped up streets).

Classification of roads, etc.

16.—(1) On and after the date on which the relevant part of the authorised development is completed and open for traffic—

- (a) the roads described in Part 1 (special roads) of Schedule 4 (classification of roads, etc.) will be—
 - (i) special roads for the purpose of any enactment or instrument which refers to highways classified as special roads;
 - (ii) trunk roads for the purpose of any enactment or instrument which refers to highways classified as trunk roads;
 - (iii) 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;

and the undertaker will be the highway authority for those roads;

- (b) the roads described in Part 2 (Transport for London road network) of Schedule 4 will be—
 - (i) GLA Roads as if they had become so by virtue of an order under section 14B (order of the authority changing what are GLA roads) of the 1980 Act specifying that date as the date on which they were to become GLA roads; and
 - (ii) Transport for London will be the highway authority for those roads;

- (c) the roads described in Part 3 (trunk roads) of Schedule 4 (classification of roads, etc.) will be trunk roads as if they had become so by virtue of an order under section 10(2)(19) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads; and
- (d) the public rights of way described in Part 6 (other public rights of way) of Schedule 4 (classification of roads, etc.) will be of the types described in column (1) to the extent described in column (2).

(2) Subject to paragraph (3) the undertaker may vary the classification of the roads, or any part of those roads, provided for in paragraph (1) and such variation may provide for any trunk road comprised in the authorised development and referred to in paragraph (1)(c) to be classified as a special road under paragraph (1)(a).

(3) The undertaker must not exercise the powers conferred by paragraph (2) unless the undertaker has—

- (a) given not less than 4 weeks' notice in writing of the undertaker's intention to do so to the chief officer of police and to the local highway authority in whose area the road is situated; and
- (b) published a notice, declaring the date on which that road or part of it is to be classified, not less than 7 days before that date, in at least one local newspaper circulating in the area in which the road, or as the case may be, the relevant part of it is situated and in the London Gazette.

(4) Before exercising the powers conferred by paragraph (2) the undertaker must consult such persons as the undertaker considers necessary and appropriate and must take into consideration any representations made to the undertaker by any such person.

(5) On and after the date on which the roads specified in Part 4 (speed limits) of Schedule 4 (classification of roads, etc.) 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 that Part along the lengths of road identified in the corresponding row of column (2) of that Part.

(6) The application of paragraphs (1) and (5) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters including by an instrument made under the 1984 Act where the matter in question could have been included in an order made under that Act.

(7) In this article, and in Schedule 4 (classification of roads, etc.)—

“the GLA” means the Greater London Authority;

“GLA Road” has the same meaning as in the 1980 Act; and

“Transport for London” means the body corporate established under section 154 of the 1999 Act, of 5 Endeavour Square, London, E20 1JN.

Clearways

17.—(1) Except as provided in paragraph (2), on and after the date on which the roads described in column (2) of Part 5 (traffic regulation measures (clearways)) of Schedule 4 (classification of roads, etc.) and identified in the corresponding row of column (3) of that Part as to become a clearway, are open for traffic, no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) may apply—

(19) Section 10(2) was amended by section 22(2)(a) of the 1991 Act, and by section 1(6) of, and paragraphs 1 and 10(1) and (2) of Schedule 1 to, the Infrastructure Act 2015.

- (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, maintenance or renewal 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 electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003(20); 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(21); or
 - (iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(22); 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(23).

Traffic regulation

18.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) make provision as to the direction or priority of vehicular traffic on any road; and

(20) 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

(21) 1991 c. 56.

(22) 2000 c. 26.

(23) 2004 c. 18.

- (d) permit or prohibit vehicular access to any road,
either at all times or at times, on days or during such periods as may be specified by the undertaker.
- (3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.
- (4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).
- (5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—
- (a) given not less than—
 - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,
 to the chief officer of police and to the traffic authority in whose area the road is situated; and
 - (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a) (i), or within 7 days of the receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).
- (6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—
- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32(24) (power of local authorities to provide parking places) of the 1984 Act,
 and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
 - (b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(25).
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.
- (8) Before exercising the powers conferred by paragraph (2), the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.
- (9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.
- (11) If the traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

(24) Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(25) 2004 c. 18.

