
STATUTORY INSTRUMENTS

2022 No. 934

The A428 Black Cat to Caxton Gibbet
Development Consent Order 2022

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 relevant 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 of 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) (restrictions 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);

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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 1991 Act.
 - (2) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); by 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 1991 Act.
 - (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, of 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.

section 73C**(9)** (materials, workmanship and standard of re-surfacing);
 section 78A**(10)** (contributions to costs of re-surfacing by undertaker); and
 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 restriction on the use, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 16 (temporary alteration, prohibition and restriction of use of streets) whether or not the restriction on the use, alteration or diversion 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**(17)** (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 restriction of use, 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;
- (b) means the undertaker is 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
- (c) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

(9) Section 73C was inserted by section 55 of the Traffic Management Act 2004.

(10) Section 78A was inserted by section 57 of the Traffic Management Act 2004.

(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 section 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 sections 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.

(17) Section 75 was substituted by section 58(2) of the Traffic Management Act 2004.

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

12.—(1) Subject to paragraphs (9) to (13), 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 relevant local highway authority.

(2) The reasonable satisfaction of the relevant local highway authority under paragraph (1) is to be signified by the issue by the local highway authority of a certificate to that effect.

(3) Unless otherwise agreed in writing with the relevant local highway authority, the highway within the boundary specified in the certificate issued under paragraph (2) (including any culverts or other structures laid under it) must be maintained by and at the expense of the relevant local highway authority from the date of issue of the certificate.

(4) Subject to paragraphs (9) to (13), 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 relevant local highway authority.

(5) The reasonable satisfaction of the local highway authority under paragraph (4) is to be signified by the issue by the local highway authority of a certificate to that effect.

(6) Unless otherwise agreed in writing with the relevant local highway authority, that part of the highway within the boundary specified in the certificate issued under paragraph (4) (including any culverts or other structures laid under it) must be maintained by and at the expense of the relevant local highway authority from date of issue of the certificate.

(7) Where a highway is de-trunked under this Order—

- (a) section 265(18) (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that highway; and
- (b) any alterations to that highway undertaken under powers conferred by this Order prior to or in connection with that de-trunking must, unless otherwise agreed in writing with the relevant local highway authority, be maintained by and at the expense of the relevant local highway authority from the date of de-trunking.

(8) 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 highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the relevant local highway authority and the remainder of the bridge, including the waterproofing membrane and any culverts or other structures laid under it, must be maintained by and at the expense of the undertaker.

(9) In the case of a bridge constructed under this Order to carry a special road or a trunk road, the highway surface (being those elements over the waterproofing membrane) and the remainder of the bridge must be maintained by and at the expense of the undertaker.

(10) In the case of a bridge constructed under this Order to carry a private right of way over a special road or trunk road, the bridge must be maintained by and at the expense of the undertaker.

(11) In the case of a bridge constructed under this Order to carry a public right of way, the surface of the bridge (being those elements over the waterproofing membrane) must be maintained by and at the expense of the relevant local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker.

(12) In the case of a bridge constructed under this Order to carry a shared public right of way and private access track over a special road or trunk road, the bridge must be maintained by and at the expense of the undertaker.

(13) 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

(18) Section 265 was amended by section 1(6) of, and paragraph 52 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

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.

(14) 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.

(15) For the purposes of a defence under paragraph (14), 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 the competent person had carried out those instructions.

Classification of roads, etc.

13.—(1) On the date on which each of the roads described in Part 1 (trunk roads) of Schedule 3 (classification of roads, etc.) are completed and open for traffic, it is to become a trunk road as if it 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.

(2) On the date on which each of the roads described in Part 2 (classified roads) of Schedule 3 are completed and open for traffic, it is to become a classified road 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.

(3) On the date on which each of the roads described in Part 3 (unclassified roads) of Schedule 3 are completed and open for traffic, it is to become an unclassified road for the purpose of any enactment or instrument which refers to unclassified roads.

(4) On and after the date on which each of the roads specified in Part 4 (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 that Part along any lengths of that road identified in the corresponding row of column (2) of that Part.

(5) Subject to article 19 (clearways, prohibitions and restrictions), on and after a date determined by the undertaker, the restrictions specified in column (3) of Part 5 (traffic regulation measures (clearways and prohibitions)) of Schedule 3 are to apply to the lengths of road identified in the corresponding row of column (2) of that Part.

(19) Section 10(2) was amended by section 22 of the 1991 Act, and by section 1(6) of, and paragraph 10(2) of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(6) On a date to be determined by the undertaker, the orders specified in column (3) of Part 6 (revocations and variations of existing traffic regulation orders) of Schedule 3 are 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.

(7) Unless otherwise agreed in writing with the relevant local highway authority, the footpaths, cycle tracks, footways, bridlepaths and bridleways set out in Part 7 (footpaths, cycle tracks, footways, bridlepaths and bridleways) of Schedule 3 and identified on the streets, rights of way and access plans are, subject to article 9 (limits of deviation), to be constructed by the undertaker in the specified locations and open for use on and after the date on which the last of the roads described in Parts 1 to 3 of Schedule 3 (classification of roads etc.) is completed and open for traffic or in each case on and after such earlier date as may be required pursuant to article 18(2)(a).

(8) On a date or dates to be determined by the undertaker, the roads described in Part 8 (roads to be de-trunked) of Schedule 3 are to cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order made under section 10(2) of the 1980 Act specifying that date or date as the date or dates on which they were to cease to be trunk roads.

(9) The undertaker may only make a determination for the purposes of paragraph (8) with the consent of the Secretary of State, following consultation with the relevant local highway authority as to the date and as to whether the highway to be de-trunked is of a reasonably satisfactory standard for use as a local highway.

(10) The application of paragraphs (1) to (9) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

(11) Subject to paragraph (12) the undertaker may vary the classification of the roads, or any part of those roads, provided for in paragraphs (1), (2) and (3) and such variation may provide for any trunk road comprised in the authorised development and referred to in paragraph (1) to be classified as a special road.

(12) The undertaker must not exercise the powers conferred by paragraph (11) unless the undertaker has—

- (a) given not less than four weeks' notice in writing of the undertaker's intention to do so to the chief officer of police and to the relevant 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 seven 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.

(13) Before exercising the powers conferred by paragraph (11) 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.

(14) Any roads classified as a special road in accordance with paragraph (11) are, on and from the date on which they are so classified, 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(20) of the classes of traffic set out in Schedule 4 (classes of traffic for purposes of special roads) to the 1980 Act.

(15) The restrictions provided for in paragraph (5) do not apply to an authorised vehicle where the vehicle is excepted from the restrictions in column (3) of Part 5 of Schedule 3.

(20) Classes I and II were amended by section 4 of, and paragraph 21(3) of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(16) In paragraph (15), “authorised vehicle” means a vehicle specified by the undertaker from time to time.

(17) No later than the expiry of the period of 12 weeks beginning with the day on which the relevant local highway authority becomes responsible for the maintenance of a footpath, cycle track, footway, bridlepath or bridleway referred to in paragraph (7), the undertaker must provide the relevant local highway authority with material specifying the location of the completed footpath, cycle track, footway, bridlepath or bridleway.

Power to alter layout etc. of streets

14.—(1) Subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, bridlepath, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, bridlepath, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) make and maintain passing places.

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1)—

- (a) are exercisable on the giving of not less than 42 days’ notice to the street authority; and
- (b) are not to be exercised without the consent of the street authority where that authority is a public authority.

(4) If a street authority which receives an application for consent under paragraph (3) fails to notify the undertaker of its decision before the later of—

- (a) the end of the period of 28 days beginning with the date on which the application was made; or
- (b) if further information is reasonably requested by the street authority during the period of 28 days beginning with the date on which the application was made, the end of the period of 14 days beginning with the date on which the further information was provided to the street authority,

it is deemed to have granted consent.

(5) Paragraphs (2), (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are carried out.

Street works

15.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in or under the street;
- (e) maintain, renew or alter apparatus in the street or change its position;

- (f) demolish, remove, replace and relocate any street furniture;
- (g) execute any works to provide or improve sight lines;
- (h) execute and maintain any works to provide hard and soft landscaping;
- (i) carry out re-lining and placement of road markings;
- (j) remove and install temporary and permanent signage; and
- (k) execute any works required for, or incidental to, any works referred to in paragraphs (a) to (j).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

Temporary alteration, diversion, prohibition and restriction of the use of streets

16.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit 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 where the use has been temporarily prohibited or restricted under the powers conferred by this article, and 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 alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) The undertaker must not temporarily alter, divert, prohibit 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 temporary alteration, diversion, prohibition or restriction 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 later of—

- (a) the end of the period of 28 days beginning with the date on which the application was made; or
- (b) if further information is reasonably requested by the street authority during the period of 28 days beginning with the date on which the application was made, the end of the period of 14 days beginning with the date on which the further information was provided to the street authority,

it is deemed to have granted consent.

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

17.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up each of the streets and private means of access shown on the streets, rights of way and access plans and specified in columns (1) and (2) of Parts 1, 2, 3 and 4 of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of 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
- (c) there is a 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, as if it were a dispute under Part 1 of the 1961 Act.

(7) This article is subject to article 40 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

18. 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.

Clearways, prohibitions and restrictions

19.—(1) On and after 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 5 (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 of, 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 electronic communications apparatus as defined in Schedule 3A (the electronic communications code) to the Communications Act 2003⁽²¹⁾; 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⁽²²⁾; or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000⁽²³⁾; 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⁽²⁴⁾.

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

(22) 1991 c. 56.

(23) 2000 c. 26.

(24) 2004 c. 18.