
STATUTORY INSTRUMENTS

2024 No. 796

The Mallard Pass Solar Farm Order 2024

PART 3

STREETS

Street Works

8.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus under the street;
- (d) maintain, change the position or remove apparatus under the street;
- (e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

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

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc. of streets

9.—(1) The undertaker may for the purposes of the authorised development, or in connection with the authorised development, alter the layout of or carry out any works in the streets specified in column 2 of the table in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) permanently in the manner specified in relation to that street in column 3.

(2) The undertaker may for the purposes of construction or decommissioning of the authorised development, alter the layout of or carry out any works in the streets specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 5 (alteration of streets) temporarily in the manner specified in relation to that street in column 3.

(3) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (4) and (5), the undertaker may, for the purposes of the authorised development, or in connection with the authorised development, alter the layout of any street within the Order limits, and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing places.

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

(5) The powers conferred by paragraph (3) may not be exercised without the prior consent of the street authority, such consent to be in a form reasonably required by the street authority.

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

(7) Paragraph (5) does not apply if the street authority has already provided detailed design approval pursuant to requirement 6(1) of Schedule 2 (requirements) in relation to a street in which the undertaker seeks to use the powers given by paragraph (3).

Construction and maintenance of altered streets

10.—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and, unless otherwise agreed by the street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 5 (alteration of streets) must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and the temporary alterations must be maintained by and at the expense of the undertaker for the duration that the temporary alterations are used by the undertaker for the purposes of construction or decommissioning of the authorised development.

(3) Those restoration works carried out pursuant to article 9(4) (power to alter layout, etc. of streets) must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(4) 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.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

- (a) the character of the street including 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 that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the

action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) Paragraphs (2) to (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary closure of and permitting vehicular use on public rights of way

11.—(1) The undertaker may, for the purposes of the authorised development, or in connection with the authorised development, temporarily close, prohibit the use of, restrict the use of, authorise the use of, alter or divert any public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the public right of way;
- (b) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and
- (c) subject to paragraph (2), prevent all persons from passing along the public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a public right of way affected by the temporary closure, prohibition, restriction, alteration or diversion of a public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

- (a) the public rights of way specified in column 2 of the table in Part 1 (public rights of way to be temporarily stopped up) of Schedule 6 (public rights of way) to the extent specified in column 3 of that table; and
- (b) the public rights of way specified in column 2 of the table in Part 2 (temporary use of motor vehicles on public right of way) of Schedule 6 (public rights of way) to the extent specified in column 3 of that table.

(4) The undertaker must not temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

- (a) any public right of way specified in paragraph (3) without—
 - (i) in relation to the construction of the authorised development only, a construction environmental management plan for the phase of the authorised development in which the public right of way is situated first having been approved under requirement 11; and
 - (ii) in relation to the decommissioning of the authorised development only, a decommissioning environmental management plan for the phase of the authorised development in which the public right of way is situated first having been approved under requirement 18;
- (b) any other public right of way without the consent of the street authority, and—
 - (i) in relation to the construction of the authorised development only, a construction environmental management plan for the phase of the authorised development in which the public right of way is situated first having been approved under requirement 11; and
 - (ii) in relation to the decommissioning of the authorised development only, a decommissioning environmental management plan for the phase of the authorised development in which the public right of way is situated first having been approved under requirement 18.

(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 (determination of questions of disputed compensation) of the 1961 Act.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any public right of way which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(7) In this article expressions used in this article and in the 1984 Act have the same meaning.

Claimed public right of way

12.—(1) Subject to the provisions of this article, the undertaker may for the purposes of the authorised development stop up, to an extent that does not exceed the limits of the land shown hatched in green on the claimed rights of way plan, any street situated in whole or in part on the land shown hatched in green on the claimed rights of way plan whether or not that street was in existence or recognised on the definitive map on the date this Order is made.

(2) Where a street is stopped up under paragraph (1)—

- (a) subject to paragraph (3), all public rights of way over or along a street so stopped up are extinguished;
- (b) subject to paragraph (4), private rights over or along a street so stopped up are extinguished or cease to have effect; and
- (c) the undertaker may appropriate and use for the purposes of the authorised development so much of the street as is bounded on both sides by land owned by the undertaker.

(3) The extinguishment of public rights of way referred to in paragraph (2)(a) will come into effect seven working days after the undertaker serves a notice on the surveying authority giving details of the extent of the stopping up and including a plan showing the extent by which a street referred to in paragraph (1) has been stopped up.

(4) The power conferred by paragraph (1) must not be exercised by the undertaker earlier than the date on which the undertaker has acquired an interest in the land comprised in the extent of the street to be stopped up and the provisions of article 23 (private rights) apply to the extinguishment or cessation of any such private rights.

(5) A notice referred to in paragraph (3) is deemed to be a legal event for the purposes of section 53(3)(a)(i)(1) of the Wildlife and Countryside Act 1981.

(6) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

(7) 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 (determination of questions of disputed compensation) of the 1961 Act.

(8) In this article—

“definitive map” has the meaning given to it by section 53(1) of the Wildlife and Countryside Act 1981;

“surveying authority” has the meaning given to it by section 66(1)(2) (interpretation of Part III) of the Wildlife and Countryside Act 1981; and

section 159 of the 2008 Act applies to this article.

(1) Section 53 was amended by Schedule 5 to the Countryside and Rights of Way Act 2000 (c. 37) and by section 70(1) of the Natural Environment and Rural Communities Act 2006 (c. 16).

(2) Section 66 was amended by sections 1, 2 and 7 of, and paragraph 7(6) of Schedule 3 to, the Local Government Act 1985 (c. 51). There are other amendments to this section that are not relevant to this Order.

Access to works

13.—(1) The undertaker may, for the purposes of the authorised development and in connection with the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 7 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority in such a form as reasonably required by the highway authority, form and lay out such other 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.

(2) Paragraph (1)(b) does not apply if the relevant planning authority has already provided detailed design approval pursuant to requirement 6(1) of Schedule 2 (requirements) for the access sought to be formed and lay out pursuant to paragraph (1)(b).

Agreements with street authorities

14.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (c) the undertaking in the street of any of the works referred to in article 8 (street works), article 10(1) (construction and maintenance of altered streets) and article 13 (access to works); or
- (d) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing public maintainable highway; or
 - (ii) which the undertaker and highway authority agree to be adopted as public maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation measures

15.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of the authorised development, or in connection with the authorised development—

- (a) make provision in respect of those lengths of road specified in column 2 of Part 1 of Schedule 8 (traffic regulation measures) imposing the temporary speed limit mentioned in column 3 of that Part of that Schedule;
- (b) make provision in respect of those lengths of road specified in column 2 of Part 2 of Schedule 8 (traffic regulation measures) temporarily closing that road to the classes of road user specified in column 3 of that Part of that Schedule; and

- (c) temporarily place traffic signs and signals in the extents of the road specified in column 2 of Part 3 of Schedule 8 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016⁽³⁾, including, notwithstanding article 3 (development consent etc. granted by this Order), locations outside of the Order limits as shown on the traffic regulation measures plans – temporary measures.
- (2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the authorised development—
- (a) as to the speed at which vehicles may proceed along any road;
 - (b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;
 - (c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;
 - (d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and
 - (e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.
- (3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011⁽⁴⁾ when in accordance with regulation 3(5) of those regulations.
- (4) Before exercising the power conferred by paragraph (2) the undertaker must—
- (a) consult with the chief officer of police in whose area the road is situated; and
 - (b) obtain the written consent of the traffic authority.
- (5) The undertaker must not exercise the powers in paragraph (1) or (2) unless it has—
- (a) given not less than 4 weeks’ notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated;
 - (b) not less than 7 days before the provision is to take effect, published the undertaker’s intention to make the provision in one or more newspaper circulating in the area in which any road to which the provision relates is situated; and
 - (c) either—
 - (i) in relation to the construction of the authorised development only, have first obtained approval under requirement 12 for a construction traffic management plan for the phase of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised; or
 - (ii) in relation to the decommissioning of the authorised development only, have first obtained approval under requirement 18 for a decommissioning environmental management plan for the phase of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised.
- (6) Any provision made under the powers conferred by paragraph (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (2).
- (7) Any provision made by the undertaker under paragraph (1) or (2)—

(3) S.I. 2016/362.

(4) S.I. 2011/935.

- (a) must be made by written instrument in such form as the undertaker considers appropriate;
- (b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and
- (c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004⁽⁵⁾ (road traffic contraventions subject to civil enforcement).