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STATUTORY INSTRUMENTS

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**2016 No. 863**

**The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016**

**PART 3**

**STREETS**

**Application of the 1991 Act**

**9.**—(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) (highway authorities, highways and related matters) of that Act (which defines what highway authority works are major highway works); 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 (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act references, in relation to major highway works, 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 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial street works);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (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 promoter

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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).

under the powers conferred by article 14 (temporary stopping up 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(2) referred to in paragraph (4) are—
- section 54(3) (advance notice of certain works), subject to paragraph (6);
  - section 55(4) (notice of starting date of works), subject to paragraph (6);
  - section 57(5) (notice of emergency works);
  - section 59(6) (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)—
- (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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(2) 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).

(3) As also amended by section 49(1) of the Traffic Management Act 2004.

(4) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(5) As also amended by section 52(3) of the Traffic Management Act 2004.

(6) As amended by section 42 of the Traffic Management Act 2004.