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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.

### **Power to alter layout etc. of streets**

**10.**—(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, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, 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)—

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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.

- (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 end of the period of 6 weeks beginning with the date on which the application was made, 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 being carried out.

### **Street works**

**11.**—(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;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for, or incidental to, any works referred to in subparagraphs (a), (b), (c) and (d).

(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.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

### **Construction and maintenance of new, altered or diverted streets**

**12.**—(1) Subject to paragraphs (3) and (4), any street (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 street lies and, unless otherwise agreed with the local highway authority, must be maintained by and at the expense of the local highway authority from its completion.

(2) Subject to paragraphs (3) and (4), where a street (other than a trunk road or special road) is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of the street authority from its completion.

(3) In the case of a bridge constructed under this Order to carry a public right of way, the highway surface must be completed to the reasonable satisfaction of the street authority and maintained by and at the expense of the local highway authority and the structure of the bridge must be maintained by and at the expense of the undertaker.

(4) In the case of a bridge constructed under this Order to carry a private right of way, the surface and the structure of the bridge 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 the undertaker to maintain a street under this article, it is a defence (without affecting 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.

(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 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.

### **Permanent stopping up of streets**

**13.**—(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 columns (1) and (2) of Schedule 3 (permanent stopping up of streets for which a substitute is to be provided) to the extent specified and described in column (3) of that Schedule.

(2) No street specified in columns (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, specified in column (4) 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 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, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article is subject to article 31 (apparatus and rights of statutory undertakers in stopped up streets).

### **Temporary stopping up of streets**

**14.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert 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 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 stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 4 (temporary stopping up of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter or divert any street for which the undertaker is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

(6) If a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 6 weeks beginning with the date on which the application was made, it is deemed to have granted consent.

(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.

### **Access to works**

**15.** 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.

### **Powers in relation to relevant navigations or watercourses**

**16.—**(1) Subject to Schedule 9 (protection of interests), the undertaker may, for the purpose of or in connection with the carrying out and maintenance of the authorised development, regardless of any interference with any public or private rights—

- (a) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of a relevant navigation or watercourse;
- (b) remove or relocate any moorings so far as may be reasonably necessary for the purposes of carrying out and of maintaining the authorised development;
- (c) temporarily moor or anchor vessels and structures;
- (d) construct, place, maintain and remove temporary works and structures within the banks, bed, foreshores, waters and walls of a relevant navigation or watercourse; and
- (e) interfere with the navigation of any relevant navigation or watercourse,

in such manner and to such extent as may appear to it to be necessary or convenient.

(2) Except in the case of emergency, the undertaker must use reasonable endeavours to notify the owner of any mooring affected by the proposal to exercise the powers conferred by paragraph (1)(b) before the exercise of those powers.

(3) The undertaker must pay compensation to any person entitled to compensation under the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by paragraph (1)(b).

(4) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(5) In this article, "relevant navigation" means so much of—

- (a) The Kennet and Holy River;

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- (b) The Kennet and Avon Canal;
- (c) The River Thames;
- (d) The River Crane;
- (e) The Jubilee River;
- (f) The Cut; and
- (g) River Colne,

as the context requires.

(6) Nothing in this article overrides the requirement to obtain necessary consents under the Water Resources Act 1991<sup>(7)</sup>, the Environmental Permitting (England and Wales) Regulations 2010<sup>(8)</sup> or the Thames Water Authority Land Drainage Byelaws 1981.

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<sup>(7)</sup> 1991 c. 57.

<sup>(8)</sup> S.I. 2010/675.