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STATUTORY INSTRUMENTS

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**2017 No. 1202**

**The M20 Junction 10a Development Consent Order 2017**

**PART 6**

**OPERATIONS**

**Existing powers and duties of the undertaker**

**37.** Except as expressly provided, nothing in this Order is to prejudice the operation of, and the powers and duties of the undertaker under, the 1980 Act, the 1991 Act and the Town and Country Planning (General Permitted Development) (England) Order 2015(1).

**Commencement Information**

**II** Art. 37 in force at 22.12.2017, see [art. 1](#)

**Felling or lopping of trees and removal of hedgerows**

**38.—(1)** The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
  - (b) from constituting a danger to persons using the authorised development.
- (2) In carrying out any activity authorised by paragraph (1), the undertaker must—
- (a) do no unnecessary damage to any tree or shrub;
  - (b) pay compensation to any person for any loss or damage arising from such activity; and
  - (c) take steps to avoid a breach of the provisions of the Wildlife and Countryside Act 1981(2) and the Conservation of Habitats and Species Regulations 2010(3) or any successor acts and regulations.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997(4) and includes important hedgerows.

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(1) S.I. 2015/596.  
(2) 1981 c. 69.  
(3) S.I. 2010/490.  
(4) S.I. 1997/1160.

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The M20 Junction 10a Development Consent Order 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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**Commencement Information**

**I2** Art. 38 in force at 22.12.2017, see [art. 1](#)

**Trees subject to tree preservation orders**

**39.**—(1) The undertaker may fell or lop any tree described in Schedule 8 (trees subject to tree preservation orders), cut back its roots or undertake such other works described in column (2) of that Schedule relating to the relevant part of the authorised development described in column (3) of that Schedule, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
  - (b) from constituting a danger to persons using the authorised development.
- (2) In carrying out any activity authorised by paragraph (1)—
- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;
  - (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and
  - (c) the undertaker must consult the relevant planning authority prior to that activity taking place.

(3) The authority given in paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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**Commencement Information**

**I3** Art. 39 in force at 22.12.2017, see [art. 1](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 2 para. 3(2)(ea) inserted by [S.I. 2019/1271 art. 2\(2\)\(b\)](#)
- Sch. 2 para. 3(6) inserted by [S.I. 2019/1271 art. 2\(3\)](#)