
STATUTORY INSTRUMENTS

2022 No. 573

The M25 Junction 28 Development Consent Order 2022

PART 3

STREETS

Application of the 1991 Act

10.—(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 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 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, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act (including any equivalent or modified provisions in any permit scheme) do not apply to any works executed under the powers conferred by 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) (restriction on works 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);
- section 73C(9) (materials, workmanship and standard of re-surfacing);
- section 78A(10) (contributions to costs of re-surfacing by undertaker); and

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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 New Roads and Street Works Act 1991 (c. 22).
 - (2) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); 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 New Roads and Street Works Act 1991.
 - (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, 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.
 - (9) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
 - (10) Section 78A was inserted by section 57(1) of the Traffic Management Act 2004.

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 alteration, diversion or restriction of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary stopping up and restriction of use of streets), whether or not the alteration, diversion or restriction 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 (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, diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 11 (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, 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 maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 of the 1991 Act apply.

(8) Subject to paragraphs (3), (9) and (10), permit schemes will apply to the construction and maintenance of the authorised development and will be used by the undertaker in connection with the exercise of any powers conferred by this Part.

(9) For the purposes of this Order a permit under a permit scheme may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions pursuant to the powers conferred by this Order.

(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 sections 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 section 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.

(10) Without restricting the undertaker's recourse to any appeal mechanism which may be available under a permit scheme the undertaker may alternatively refer the matter to arbitration under article 53 (arbitration).

(11) Any order made by the Secretary of State under section 74A(2)(**17**) (charge determined by reference to duration of works) of the 1991 Act for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012(**18**) does not have effect in relation to the construction or maintenance of the authorised development.

Commencement Information

II Art. 10 in force at 6.6.2022, see [art. 1](#)

(**17**) Section 74A was inserted by section 255(1) of the Transport Act 2000 (c. 38) and amended by section 40 of the Traffic Management Act 2004.

(**18**) [S.I. 2012/425](#), as amended by [S.I. 2015/377](#) and [S.I. 2018/215](#).

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The M25 Junction 28 Development Consent Order 2022. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- art. 10(1) words inserted by [S.I. 2024/129 Sch.](#)