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STATUTORY INSTRUMENTS

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**2023 No. 778**

**The Boston Alternative Energy Facility Order 2023**

**PART 3**

**STREETS**

**Street works**

**10.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (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 apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) or (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) 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).

**Application of the 1991 Act**

**11.**—(1) Works constructed or maintained 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 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 (street works in England and Wales) 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.

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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) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- section 56(3) (power to give directions as to timing);
- section 56A(4) (power to give directions as to placing of apparatus);
- section 58(5) (restrictions 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
- Schedule 3A(11) (restrictions 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 use of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary closure, alteration, diversion 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 closure, alteration, diversion or restriction (as the case may be) required in a case of emergency.

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(3) Section 56 was amended by section 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 section 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 of the Traffic Management Act 2004.

(11) Schedule 3A was inserted by section 52(2) of, 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) As also amended by section 49(1) of the Traffic Management Act 2004.

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

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

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

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

**12.**—(1) The undertaker may for the purposes of the authorised development permanently or temporarily alter the layout of or carry out any works in the street specified in column (1) of Part 1 or 2 of Schedule 4 (streets subject to alteration of layout) in the manner specified in relation to that street in column (2).

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development alter the layout of any street within the Order limits and, without limiting the scope of this paragraph, the undertaker may—

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

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

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Temporary closure, alteration, diversion and restriction of use of streets**

**13.**—(1) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily close, alter, divert, prohibit the use of or restrict the use of 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 prejudice to the scope of paragraph (1), the undertaker may use any street temporarily closed, altered, diverted or restricted 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 closure, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, alter, divert or restrict the use of the streets specified in column (1) of Schedule 5 (temporary closure, alteration, diversion and restriction of the use of streets) to the extent specified in column (2) of that Schedule.

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

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(6) 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.

(7) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of a higher standard than the temporarily closed, altered, diverted or restricted street specified in Schedule 5.

(8) If a street authority which receives a valid application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

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

**14.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up the streets specified in column (1) of Schedule 6 (permanent stopping up of streets and public rights of way) to the extent specified and as described in column (2) of that Schedule.

(2) 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.

(3) 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.

(4) This article is subject to article 36 (apparatus and rights of statutory undertakers in stopped up streets).

### **Access to works**

**15.**—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access in the locations specified in Part 1 of Schedule 4 (streets subject to alteration of layout);
- (b) form and layout the temporary means of access in the locations specified in Part 2 of Schedule 4 (streets subject to alteration of layout); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a relevant planning authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Use of private roads**

**16.**—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction or maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

### **Agreements with street authorities**

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

- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) the maintenance of any street or the structure of any bridge or tunnel carrying a street over or under the authorised development;
  - (d) any closure, alteration, diversion or restriction in the use of a street authorised by this Order;
  - (e) the construction in the street of any of the authorised development; or
  - (f) any such works as the parties may agree.
- (2) Such an 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) include an agreement between the undertaker and street authority specifying 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**

**18.**—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
- (b) make provision as to the direction or priority of vehicular traffic on any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

- (a) given not less than four weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary closure, alteration, diversion and restriction of use of streets) or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7(17) (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004.

(4) In this article—

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(17) 2004 c. 18. There are amendments to this Act not relevant to this Order.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (a) subject to sub-paragraph (b), expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.