
STATUTORY INSTRUMENTS

2015 No. 129

**The A160/A180 (Port of Immingham
Improvement) Development Consent Order 2015**

**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) (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 (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act references 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 Secretary of State.

(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

(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 13 (temporary stopping up and restriction of use 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 10 (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 Secretary of State 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.

Construction and maintenance of new, altered or diverted streets

10.—(1) Any street (other than a trunk 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) Where a street (other than a trunk 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) Where a highway is de-trunked under this Order—
- (a) section 265 (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) of the 1980 Act applies in respect of that road; and
 - (b) any alterations to that highway undertaken under powers conferred by this Order prior to and in connection with that de-trunking must, unless otherwise agreed with the local

(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.

highway authority, be maintained by and at the expense of the local highway authority from the date of de-trunking.

(4) In the case of a bridge constructed under this Order to carry a public right of way, the highway surface (being those elements over the waterproofing membrane) must be maintained by and at the expense of the local highway authority and the remainder of the bridge, including the waterproofing membrane and structure below, must be maintained by and at the expense of the Secretary of State.

(5) In any action against the Secretary of State in respect of loss or damage resulting from any failure by the Secretary of State to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the Secretary of State 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 Secretary of State 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 Secretary of State 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 Secretary of State 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 Secretary of State 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.

Classification of roads, etc.

11.—(1) On the date on which the roads described in Parts 1 and 2 of Schedule 3 (classification of roads, etc.) are completed and open for traffic—

- (a) the roads described in Part 1 (trunk roads) of Schedule 3 are to become trunk roads as if they had become so by virtue of an order under section 10(2) (general provision as to trunk roads) of the 1980 Act specifying that date as the date on which they were to become trunk roads;
- (b) the roads described in columns (1) and (2) of Part 2 (other road classifications) of Schedule 3 cease to have the classification specified in column (3) of that Part and take the classification specified in column (4) of that Part; and
- (c) the roads given a classification in column (4) of Part 2 of Schedule 3 are to be classified roads for the purpose of any enactment or instrument which refers to highways classified as classified roads, as if such classification had been made under section 12(3) (general provision as to principal and classified roads) of the 1980 Act.

(2) On such day as the Secretary of State may determine, the roads described in Part 3 (roads to be de-trunked) of Schedule 3 are to—

- (a) cease to be trunk roads as if they had ceased to be trunk roads by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to cease to be trunk roads; and
 - (b) be classified as specified in column (4) of that Part as if such classification had been made under section 12(3) of the Highways Act 1980.
- (3) From the date on which the roads specified in Part 4 of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding 30 miles per hour in the lengths of road identified in that Part of that Schedule.
- (4) From the date on which the roads specified in Part 5 of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding 40 miles per hour in the lengths of road identified in that Part of that Schedule.
- (5) From the date on which the roads specified in Part 6 of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a speed exceeding 50 miles per hour in the lengths of road identified in that Part of that Schedule.
- (6) From the date on which the roads specified in columns (1) and (2) of Part 7 of Schedule 3 are open for traffic, no person is to drive any motor vehicle at a weight exceeding the weight limit specified in column (3) of that Part of that Schedule in the length of road identified, except where required for access to a property located along such lengths of road.
- (7) From such a day as the Secretary of State may determine, the roads specified in columns (1) and (2) of Part 8 of Schedule 3 will be subject to the restrictions specified in column (3) of that Part of that Schedule.
- (8) From the date on which the roads specified in Part 9 of Schedule 3 are open for traffic they will be subject to one way restrictions to the extent specified in column (2) of that Part of that Schedule.
- (9) From the date on which the road specified in Part 10 of Schedule 3 is open for traffic it will be restricted to escorted vehicles to the extent specified in column (2) of that Part of that Schedule.
- (10) Unless otherwise agreed with the relevant planning authority the cycle tracks and footways set out in Part 11 of Schedule 3 and identified on the rights of way and access plans are to be constructed by the Secretary of State in the specified locations and open for use from the date on which the authorised development is open for traffic.
- (11) Unless otherwise agreed with the relevant land owner the private accesses set out in Part 12 of Schedule 3 and identified on the rights of way and access plans are to be constructed by the Secretary of State in the specified locations and open for use from the date on which the authorised development is open for traffic.
- (12) Unless otherwise agreed with the relevant landowner the public right of way set out in Part 13 of Schedule 3 and identified on the rights of way and access plans is to be constructed by the Secretary of State.
- (13) Unless otherwise agreed with the relevant landowner the permissive right of way set out in Part 14 of Schedule 3 and identified on the rights of way and access plans is to be diverted by the Secretary of State as shown on those plans during the construction of the authorised development.
- (14) The application of paragraphs (1) to (13) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Permanent stopping up and restriction of use of streets

12.—(1) Subject to the provisions of this article, the Secretary of State may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 (permanent stopping up of streets) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, specified in column (4) of that Part 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 Secretary of State, 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) No street specified in columns (1) and (2) of Part 2 of Schedule 4 (streets for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the Secretary of State is in possession of the land;
- (b) there is no right of access to the land from the street concerned;
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) 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 Secretary of State 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 Secretary of State.

(6) 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 of the 1961 Act.

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

Temporary stopping up and restriction of use of streets

13.—(1) The Secretary of State, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter, divert 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 limitation on the scope of paragraph (1), the Secretary of State may use any street temporarily stopped up or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The Secretary of State must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) The Secretary of State must not temporarily stop up, alter, divert or restrict the use of any street for which it is not street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld.

(5) 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 of the 1961 Act.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the Secretary of State 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.

Access to works

14. The Secretary of State 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 Secretary of State reasonably requires for the purposes of the authorised development.

Clearways

15.—(1) From the date on which the roads described in Part 1 of Schedule 3 (classification of roads, etc.) are open for traffic no person is to cause or permit any vehicle to wait on any part of those roads, other than a lay-by, except as provided for in paragraph (2) or upon the direction of, or with the permission of, a constable or traffic officer in uniform.

(2) Nothing in paragraph (1) above applies—

(a) to render it unlawful to cause or permit a vehicle to wait on any part of a road, for so long as may be necessary to enable that vehicle to be used in connection with—

(i) the removal of any obstruction to traffic;

(ii) the maintenance or operation of the road;

(iii) the laying, erection, maintenance or renewal in or near the road of any sewer, main pipe, conduit, wire, cable or other apparatus for the supply of gas, water, electricity or any telecommunications apparatus as defined in Schedule 2 (the Telecommunications Code) to the Telecommunications Act 1984(7); or

(iv) any building operation or demolition;

(b) in relation to a vehicle being used—

(i) for police, ambulance, fire and rescue authority or traffic officer purposes;

(ii) in the service of a local authority, safety camera partnership or the Driver and Vehicle Standards Agency in pursuance of statutory powers or duties;

(iii) in the service of a water or sewerage undertaker within the meaning of the Water Industry Act 1991(8); or

(iv) by a universal service provider for the purposes of providing a universal postal service as defined by the Postal Service Act 2000(9); or

(c) in relation to a vehicle waiting when the person in control of it is—

(i) required by law to stop;

(ii) obliged to stop in order to avoid an accident; or

(iii) prevented from proceeding by circumstances outside the person's control.

(3) No person is to cause or permit any vehicle to wait on any part of the roads described in Part 1 of Schedule 3 for the purposes of selling, or dispensing of, goods from that vehicle, unless the goods are immediately delivered at, or taken into, premises adjacent to the land on which the vehicle stood when the goods were sold or dispensed.

(7) 1984 c. 12.

(8) 1991 c. 56.

(9) 2000 c. 26.

(4) Paragraphs (1), (2) and (3) have effect as if made by order under the 1984 Act, and their application may be varied or revoked by an order made under that Act or any other enactment which provides for the variation or revocation of such orders.

(5) In this article, “traffic officer” means an individual designated under section 2 (designation of traffic officers) of the Traffic Management Act 2004**(10)**.