
STATUTORY INSTRUMENTS

2016 No. 863

The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements in Part 1 of Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out and operated within the Order limits.

(2) Subject to article 6 (power to deviate) the authorised development must be constructed in the lines or situations shown on the works plans and, subject to the provisions of the requirements, in accordance with the drawings specified in the requirements.

Maintenance of authorised development

4. Without limitation on the scope of section 41 (duty to maintain highways maintainable at the public expense) of the 1980 Act and section 1 (appointment of strategic highways companies) of the Infrastructure Act 2015(1) the undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order or the 1980 Act, provides otherwise.

Planning permission

5. If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the authorised development,

the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

Power to deviate

6. In carrying out the scheduled works the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plans within the Order limits in respect of any linear work and in respect of any non-linear work within the Non-linear Work Boundary for that work;

- (b) deviate vertically from the levels shown or noted on the engineering drawings and sections, to a maximum of 0.5 metres upwards or downwards; and
- (c) deviate vertically from the parapet heights stated on the engineering drawings and sections, to a maximum of 0.5 metres upwards.

Benefit of the Order

7.—(1) Subject to article 8 (consent to transfer benefit of the Order) and paragraph (2), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of the Order

8.—(1) The undertaker may with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.