
STATUTORY INSTRUMENTS

2018 No. 574

The Silvertown Tunnel Order 2018

PART 2

WORKS PROVISIONS

Streets

Street works

6.—(1) TfL may, for the purposes of the authorised development, enter on so much of any street and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (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) TfL must not carry out works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

Application of the 1991 Act

7.—(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^{M1} (dual carriageways and roundabouts) of the 1980 Act or section 184^{M2} (vehicle crossings) of that Act.

(2) In Part 3 of the 1991 Act references, in relation to major highway works, 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 TfL.

(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 TfL under the powers conferred by article 10 (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 ^{M3} referred to in paragraph (4) are—

- section 54 ^{M4} (advance notice of certain works), subject to paragraph (6);
- section 55 ^{M5} (notice of starting date of works), subject to paragraph (6);
- section 57 ^{M6} (notice of emergency works);
- section 59 ^{M7} (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 8 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and TfL 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.

Marginal Citations

- M1** 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 \(c. 22\)](#).

- M2** As amended by sections 35, 37, 38 and 46 of the [Criminal Justice Act 1982 \(c. 48\)](#); paragraph 45(11) of Schedule 2 to the [Planning \(Consequential Provisions\) Act 1990 \(c. 11\)](#) and section 168 of, paragraph 9 of Schedule 8 and Schedule 9 to, the 1991 Act.
- M3** 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 \(c. 18\)](#).
- M4** As also amended by section 49(1) of the Traffic Management Act 2004.
- M5** As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
- M6** As also amended by section 52(3) of the Traffic Management Act 2004.
- M7** As amended by section 42 of the Traffic Management Act 2004.

Construction and maintenance of new, altered or diverted streets

8.—(1) Any street (other than a GLA Road) constructed under this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, must be maintained by and at the expense of TfL for a period of 12 months from its completion and thereafter by the street authority.

(2) Where a street (other than a GLA Road) is altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, that part of the street must be maintained by and at the expense of TfL for a period of 12 months from its completion and thereafter by the street authority.

(3) Where land not previously part of the public highway comes to form part of the public highway by virtue of the construction, diversion or alteration of a street under this Order, unless otherwise agreed with the street authority the land is deemed to have been dedicated as public highway on the expiry of a period of 12 months from completion of the street that has been constructed, altered or diverted.

(4) In any action against TfL in respect of loss or damage resulting from any failure by TfL 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 TfL 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.

(5) For the purposes of a defence under paragraph (4), 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 TfL 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 TfL 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 TfL 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 TfL 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.

(6) The date of completion of any works referred to in paragraphs (1) and (2) is to be agreed between TfL and the street authority, acting reasonably.

Permanent stopping up of streets and private means of access

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

(2) No street or private means of access specified in columns (1) and (2) of Parts 1 and 3 of Schedule 3 (being a street or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is 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 or private means of access to be stopped up is first provided and subsequently maintained by TfL, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Parts 2 and 4 of Schedule 3 (being a street or private access to be stopped up 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 of the land which abuts on either side of the street or private means of access to be stopped up.

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

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

(5) Not less than 28 days prior to the stopping up of each section of highway identified in columns 1 to 3 of Parts 1 and 2 of Schedule 3 TfL must erect a notice upon the highway at, or as close as reasonably practicable to, each point of stopping up, specifying the date and extent of the stopping up and, in the case of a highway mentioned in Part 1 of Schedule 3, giving details of the substitute or new highway to be provided.

(6) Where a street or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
- (b) TfL may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by TfL.

(7) 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.

(8) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

Temporary stopping up and restriction of use of streets

10.—(1) TfL may, during and for the purposes of carrying out the authorised development, temporarily stop up, alter or divert 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), TfL may use any street temporarily stopped up under the powers conferred by this article and lying within the Order limits as a temporary working site.

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

(4) TfL must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

(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 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

11. TfL may, for the purposes of the authorised development and with the consent of the street authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as TfL reasonably requires for the purposes of the authorised development.

Agreements with street authorities

12.—(1) A street authority and TfL 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 or improvement of any street under the powers conferred by this Order;
- (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
- (e) the execution 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 limitation on the scope of paragraph (1)—

- (a) provide for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between TfL and the street authority specifying a reasonable time for completion of the works;
- (c) provide for the dedication of any new street as public highway further to section 38^{M8} (power of highway authorities to adopt by agreement) of the 1980 Act; and
- (d) contain such terms as to payment and otherwise as the parties consider appropriate.

Marginal Citations

M8 As amended by section 102 of, and Schedule 17 to, the [Local Government Act 1985 \(c. 51\)](#); [section 22\(1\)](#) of the 1991 Act and paragraphs 1 and 19 of Schedule 1 to the [Infrastructure Act 2015 \(c. 7\)](#).

Use of private roads for construction

13.—(1) TfL 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 of the authorised development.

(2) TfL 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 of the 1961 Act.

Changes to legislation:

There are currently no known outstanding effects for the The Silvertown Tunnel Order 2018,
Cross Heading: Streets.