
STATUTORY INSTRUMENTS

2021 No. 74

**The A1 Birtley to Coal House
Development Consent Order 2021**

**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 Part 3 the 1991 Act do not apply in relation to any works executed under the powers of 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) (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);

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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 1991 Act.
 - (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 1991 Act.
 - (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.

section 78A(10) (contributions to costs of re-surfacing by undertaker); and
 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 stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 15 (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(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 or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 13 (construction and maintenance of new, altered or diverted streets)—
 (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
 (b) means that the undertaker is by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
 (c) 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.

Power to alter layout etc. of streets

11.—(1) Subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of this paragraph, the undertaker may—

(10) Section 78A was inserted by section 57 of the Traffic Management Act 2004.

(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 (c. 18).

(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.

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, cycle track or verge within the street;
 - (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
 - (c) reduce the width of the carriageway of the street; and
 - (d) make and maintain passing places.
- (2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.
- (3) The powers conferred by paragraph (1)—
- (a) are exercisable on the giving of not less than 42 days' notice to the street authority; and
 - (b) are not to be exercised without the consent of the street authority where that authority is a public authority.
- (4) If a street authority which received an application for consent under paragraph (3) fails to notify the undertaker of its decision before the end of 6 weeks beginning with the date on which the application is made, it is deemed to have gained consent.
- (5) Paragraphs (2), (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are to be carried out.

Street works

- 12.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the order limits and may—
- (a) break up or open the street, or any sewer, drain or tunnel under it;
 - (b) tunnel up 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 works) of the 1991 Act.
- (3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Construction and maintenance of new, altered or diverted streets

- 13.**—(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 in writing 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 in whose area the street lies and, unless otherwise agreed in writing with the local street authority, be maintained by and at the expense of the local street authority from its completion.
- (3) In the case of a bridge constructed under this Order to carry a highway (other than a trunk road) over a trunk road, 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 undertaker.

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

14.—(1) On the date on which the roads described in Part 1 (trunk roads) of Schedule 3 (classification of roads etc.) are complete and open for traffic, they will be trunk roads as if they had become so by virtue of an order under section 10(2) of the 1980 Act specifying that date as the date on which they were to become trunk roads.

(2) On the date that the public rights of way described in Part 2 (other public rights of way) of Schedule 3 are completed and open to for use they will be of the types described in column (1) to the extent described in column (2).

(3) The application of paragraphs (1) to (2) may be varied or revoked by any instrument made under any enactment which provides for the variation or revocation of such matters.

Temporary stopping up and restriction of use of streets

15.—(1) The undertaker, 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 undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article and which is 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 stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in column (1) of Schedule 5 (public rights of way to be temporarily stopped up and for which a substitute is to be provided) to the extent specified in column (2) of that Schedule.

(5) The undertaker 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 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 of the 1961 Act.

(7) If a street authority which receives an 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 and restriction of use of streets, public rights of way and private means of access

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

(2) No street, public right of way or private means of access specified in column (1) of Parts 1, 2 and 3 of Schedule 4 is to be wholly or partly stopped up under this article unless—

- (a) the new street, public right of way or private means of access to be constructed and substituted for it, which is specified in column (3) of those Parts 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, public right of way or private means of access to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street, public right of way or private means of access until the completion and opening of the new street, public right of way or private means of access in accordance with subparagraph (a).

(3) Where a street, public right of way or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street, public right of way or private means of access 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, public right of way or private means of access as is bounded on both sides by land owned by the undertaker.

(4) 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.

(5) This article is subject to article 35 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

17. The undertaker may, for the purposes of the authorised development, form and layout means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Modification of Road Traffic Regulation Orders

18.—(1) On the date on which the roads described in Part 1 of Schedule 3 (classification of roads etc.) are open for traffic—

- (a) article 2 of the A1 Trunk Road (Birtley Interchange to Scottish Border) (24-Hour Clearway) Order 2004(17) is amended so that the definition of “the trunk road” includes the length of the A1 Trunk Road as realigned by this Order in terms of Work Nos. 1a, 1b, 6a and 6b;
- (b) article 2 of the A1 Trunk Road (Gateshead/Newcastle Western Bypass) (Width Restriction) Order 2016(18) is amended as follows—
 - (i) the definition of “the A1” includes the length of the A1 Trunk Road as realigned by this Order comprised in Work Nos. 1a, 1b, 6a and 6b;
 - (ii) the definition of “the northbound carriageway” includes the A1 northbound carriageway as realigned by this Order comprised in Work Nos. 1b and 6b; and
 - (iii) the definition of “the southbound carriageway” includes the A1 southbound carriageway as realigned by this Order comprised in Work Nos. 1a and 6a;
- (c) article 2 of the A1 Trunk Road (Birtley to North Brunton) (Prohibition of Slow Moving Vehicles) Order 2001(19) is amended as follows—
 - (i) the definition of “the trunk road” includes the length of the A1 Trunk Road as realigned by this Order comprised in Work Nos. 1a, 1b, 6a and 6b;
 - (ii) the definition of “the northbound carriageway” includes the A1 northbound carriageway as realigned by this Order comprised in Work Nos. 1b and 6b; and
 - (iii) the definition of “the southbound carriageway” includes the A1 southbound carriageway as realigned by this Order comprised in Work Nos. 1a and 6a; and
- (d) the Schedule to the A1 Trunk Road (Gateshead/Newcastle Western Bypass) (Birtley Interchange to Blaydon Viaduct) (50 Miles Per Hour Speed Restriction) Order 2010(20) is amended as follows—
 - (i) paragraph (i) includes the A1 northbound carriageway as realigned by this Order in terms of Work Nos. 1b and 6b; and
 - (ii) paragraph (xiii) includes the A1 southbound carriageway as realigned by this Order in terms of Work Nos. 1a and 6a.

(2) Paragraph (1) has effect so as to give effect to the orders named in that paragraph as if the same had been imposed upon the works listed in that provision 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.

(3) On the date on which the roads described in Part 1 of Schedule 3 (classification of roads etc.) are open for traffic, they cease to be restricted roads for the purpose of section 81 (general speed limit for restricted roads) of the 1984 Act.

(17) S.I. 2004/197.

(18) S.I. 2016/1013.

(19) S.I. 2001/2230.

(20) S.I. 2010/2820 as amended by S.I. 2016/1015.

(4) Paragraph (3) has effect as if made by direction under section 82(21) (what roads are restricted roads) of the 1984 Act.

Traffic regulation

19.—(1) This article applies to roads in respect of which the undertaker is not the traffic authority.

(2) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

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

(3) The power conferred by paragraph (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised development for public use but subject to paragraph (4) any prohibition, restriction or other provision made under paragraph (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (2) unless it has—

- (a) given not less than—
 - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,to the chief officer of police and 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 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a) (i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (2)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32(22) (power of local authorities to provide parking places) of the 1984 Act,and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(21) Section 82 was amended by section 168(1) of, and paragraph 59 of Schedule 8 to, the 1991 Act.

(22) Section 32 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(1) of, and paragraph 39 of Schedule 8 to, the 1991 Act.

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004⁽²³⁾.

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised development.

(8) Before exercising the powers conferred by paragraph (2) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(11)) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (2) the traffic authority is deemed to have granted consent.

(23) 2004 c. 18.