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STATUTORY INSTRUMENTS

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**2022 No. 922**

**The Manston Airport Development Consent Order 2022**

**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 (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(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 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 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 1965 (c. 51) and section 168(2) of, and Schedule 9 to, the 1991 Act.
  - (2) Section 184 was amended by section 4 of, and Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 8 and Schedule 9 to the 1991 Act, and sections 35, 38 and 46 of the Criminal Justice Act 1982 (c. 48).
  - (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 12 (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 11 (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.

### **Construction and maintenance of new, altered or diverted streets**

**11.—**(1) Any street 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 following a specified maintenance period to be agreed with the local highway authority.

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

(11) Schedule 3A was inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.

(12) 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).

(13) Section 54 was also amended by section 49(1) of the Traffic Management Act 2004.

(14) Section 55 was also amended by sections 49(2) and 51(9) of the Traffic Management Act 2004.

(15) Section 57 was also 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.

(2) Where a street 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 street authority, be maintained by and at the expense of the street authority from its completion.

(3) 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.

(4) For the purposes of a defence under paragraph (3), 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.

### **Temporary stopping up and restriction of use of streets**

**12.**—(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 subject to the written consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(3) The undertaker 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 undertaker must not temporarily stop up, alter, divert or restrict any 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.

(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<sup>(17)</sup>.

(6) If a street authority which receives a valid 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.

### **Permanent stopping up of public rights of way**

**13.**—(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 public rights of way specified in column (1) of Parts 1 and 2 of Schedule 3 (permanent stopping up of public rights of way) to the extent specified and described in column (2) of that Schedule.

(2) No public right of way specified in column (1) of Part 1 of Schedule 3 is to be wholly or partly stopped up under this article unless—

- (a) the new public right of way to be constructed and substituted for it, which is specified in column (3) 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 public right of way 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 public right of way until the completion and opening of the new public right of way in accordance with sub-paragraph (a).

(3) No public right of way specified in column (1) of Part 1 or Part 2 of Schedule 3 is to be wholly or partly stopped up under this article unless Kent County Council has been notified six weeks before any planned diversion or closure of the public right of way.

(4) Where a public right of way has been stopped up under this article—

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

(5) Any person who suffers loss by the suspension or extinguishment of any public right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

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

### **Access to works**

**14.** The undertaker may, for the purposes of the authorised development, and with the consent of the street authority, 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 provided that this does not result in any materially new or materially different environmental effects than those assessed in the environmental statement.

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(17) Part 1 of the 1961 Act was amended by [S.I. 2009/1307](#).

## **Traffic regulation**

15.—(1) 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, at any time, for the purposes of the construction of the authorised development prohibit vehicular access, prohibit waiting of vehicles and regulate vehicular speed by imposing speed restrictions on vehicles in the manner specified in Schedule 4 (traffic regulation) on those roads specified in column (1) and along the lengths and between the points specified in column (2) in the manner specified in column (3) of that Schedule.

(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 powers conferred by paragraphs (1) and (2) may be exercised at any time prior to the expiry of 12 months from the part of the authorised development to which it relates being brought into operational use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraphs (1) and (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 paragraphs (1) and (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 paragraphs (1) and (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(18) (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

(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(19).

(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 conferred by paragraphs (1) and (2) within a period of 24 months from the part of the authorised development to which it relates being brought into operational use.

(8) Before exercising the powers conferred by paragraphs (1) and (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 paragraphs (1) and (2) the traffic authority is deemed to have granted consent.

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(18) 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.

(19) 2004 c. 18.