
STATUTORY INSTRUMENTS

2016 No. 545

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

**The Midland Metro (Birmingham City Centre Extension,
etc.) (Land Acquisition and Variation) Order 2016**

Made - - - - 24th May 2016
Coming into force - - 14th June 2016

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006⁽¹⁾ for an Order under sections 1 and 5 of the Transport and Works Act 1992⁽²⁾ (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 17th May 2016.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Midland Metro (Birmingham City Centre Extension, etc.) (Land Acquisition and Variation) Order 2016 and comes into force on 14th June 2016.

(1) S.I. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755.
(2) 1992 c. 42; section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c. 29), section 5 was amended by S.I. 2012/1659.

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961**(3)**;
- “the 1965 Act” means the Compulsory Purchase Act 1965**(4)**;
- “the 1980 Act” means the Highways Act 1980**(5)**;
- “the 1981 Act” means the Acquisition of Land Act 1981**(6)**;
- “the 1984 Act” means the Road Traffic Regulation Act 1984**(7)**;
- “the 1989 Act” means the Midland Metro Act 1989**(8)**;
- “the 1990 Act” means the Town and Country Planning Act 1990**(9)**;
- “the 1991 Act” means the New Roads and Street Works Act 1991**(10)**;
- “the 1993 Act” means the Railways Act 1993**(11)**;
- “the 2005 Order” means the Midland Metro (Birmingham City Centre Extension, etc.) Order 2005**(12)**;
- “address” includes any number or address used for the purposes of electronic transmission;
- “authorised tramway” means the street tramway authorised by this Order;
- “the authorised works” means the Order works and the works authorised by the 2005 Order;
- “the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “carriageway” has the same meaning as in the 1980 Act;
- “the City” means the City of Birmingham;
- “cycle track” has the same meaning as in the 1980 Act**(13)**;
- “the deposited section” means the section certified by the Secretary of State as the deposited section for the purposes of this Order;
- “electronic transmission” means a communication transmitted—
 - (a) by means of an electronic communications network; or
 - (b) by other means but while in electronic form;
- “the Executive” means West Midlands Passenger Transport Executive;
- “footpath” and “footway” have the same meaning as in the 1980 Act;
- “highway” and “highway authority” have the same meaning as in the 1980 Act;
- “the land plan” means the plan certified by the Secretary of State as the land plan for the purposes of this Order;

(3) 1961 c. 33.

(4) 1965 c. 56.

(5) 1980 c. 66.

(6) 1981 c. 67.

(7) 1984 c. 27.

(8) 1989 c. xv.

(9) 1990 c. 8.

(10) 1991 c. 22.

(11) 1993 c. 43.

(12) S.I. 2005/1794.

(13) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

“the limits of deviation” means the limits of deviation for the authorised tramway shown on the works plan;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to be construed accordingly;

“the Order limits” means—

- (a) the limits of deviation; and
- (b) the limits of additional land to be used shown on the works plan;

“the Order works” means the authorised tramway and any other works authorised by this Order;

“owner” in relation to land has the same meaning as in section 7 (interpretation) of the 1981 Act(14);

“the planning permission” means the outline permission granted to Argent Group plc by Birmingham City Council on 8th February 2013 in respect of planning application number 2012/05116/PA and includes any revision or replacement to, or variation of, that permission that provides for the widening of the highway within Paradise Circus Queensway;

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and
- (b) any public communications provider within the meaning of section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(15);

“street” includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“street tramway” means any part of a tramway which is laid along a street whether or not the section of the street in which its rails are laid may be used by other traffic;

“tramcar” means any vehicle (whether or not used for the carriage of passengers) carried on flanged wheels along the rails of a tramway;

“tramway” means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which—

- (a) provide support and guidance for vehicles carried on flanged wheels; and
- (b) are laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

“the tribunal” means the Lands Chamber of the Upper Tribunal; and

“the works plan” means the plan certified by the Secretary of State as the works plan for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space over its surface.

(3) All directions, distances, areas, lengths and points stated in any description of works, powers or lands are approximate.

(4) References in this Order to points identified by letters (or letters and numbers) are to be construed as references to the points so marked on the works plan.

(14) The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(15) 2003 c. 21.

Application of the 1991 Act

3.—(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(16) (dual carriageways and roundabouts) or 184(17) (vehicle crossings) of the 1980 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 under paragraph (1), to be construed as references to the Executive.

(3) The provisions of the 1991 Act mentioned in paragraph (4), and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Executive under the powers conferred by article 11 (temporary stopping up of streets) where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the Executive.

- (4) The provisions of the 1991 Act(18) referred to in paragraph (3) are—
- section 54(19) (advance notice of certain works) subject to paragraph (5);
 - section 55(20) (notice of starting date of works) subject to paragraph (5);
 - section 59(21) (general duty of street authority to co-ordinate works);
 - section 60 (general duty of undertakers to co-operate);
 - section 69 (works likely to affect other apparatus in the street);
 - 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.

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) 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.

Incorporation of the Railways Clauses Consolidation Act 1845

4.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(22) are incorporated in this Order—

- section 97 (default in payment of tolls);

(16) 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).

(17) As 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 part 1 of Schedule 8 and Schedule 9 to, the 1991 Act.

(18) Sections 54, 55 and 60 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(19) As also amended by section 49(1) of the Traffic Management Act 2004.

(20) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(21) As amended by section 42 of the Traffic Management Act 2004.

(22) 1845 c. 20.

section 103(23) (refusal to quit carriage at destination);
section 105 (carriage of dangerous goods on railway)(24);
section 144(25) (defacing of boards); and
section 145(26) (recovery of penalties).

(2) In those provisions as incorporated in this Order—

“the company” means the Executive;

“goods” includes any thing conveyed on the authorised tramway;

“lease” includes an agreement for a lease;

“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;

“the railway” means the authorised tramway, together with any authorised works ancillary to the authorised tramway;

“the special Act” means this Order; and

“toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on the authorised tramway.

Application of the Midland Metro Acts

5.—(1) The authorised tramway is to be treated as part of the Metro (as defined in the Midland Metro Acts) for—

(a) the purposes of the following provisions of the 1989 Act—

section 3(3) (incorporation and application of enactments relating to railway);

section 17(1) (transport consultative committee);

section 25 (provisions as to use of electrical energy);

section 46 (power to lop trees overhanging railway);

section 47 (removal of obstructions);

section 49 (byelaws relating to Metro);

section 50 (modification of railway regulation enactments);

section 51 (carriages on Metro deemed public services vehicles);

section 52 (power to contract for police); and

section 54 (powers of disposal, agreements for operation, etc.); and

(b) for the purposes of section 18 (application of landlord and tenant law to Metro leases) of the (No. 2) 1992 Act,

but it is not to be so treated for—

(i) the purposes of the following provisions of the 1989 Act—

section 5(4) and (5) (application of provisions of Public Utilities Street Works Act 1950 and Road Traffic Regulation Act 1984);

(23) As amended by the Statute Law Revision Act 1892 (c. 19), part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1982 (c. 48).

(24) As amended by Part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101), section 31(6) of the Criminal Law Act 1977 (c. 45) and sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).

(25) As amended by sections 84(4) and 93(1) of the Transport Act 1962 (c. 46), section 31(6) of the Criminal Law Act 1977 (c. 45) and sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).

(26) As amended by the Statute Law Revision Act 1892 (c. 19) and part 2 of Schedule 12 to the Transport Act 1962.

section 15 (gauges of railways and restrictions on working);
 section 24 (attachment of brackets, etc., to buildings for purposes of works);
 section 44 (insulation against noise); or
 section 45 (orders for insulating new buildings); or

(ii) section 24 (authorisation of new level crossings) of the 1992 Act.

(2) The authorised tramway is to be treated as part of the Metro (as defined in the Midland Metro Acts) for the purposes of sections 4 to 7 of the Midland Metro (Penalty Fares) Act 1991⁽²⁷⁾ and of any order made from time to time under sections 3(2) (operation of Act) or 5(2) (amount of penalty fare) of that Act (whether made before or after this Order comes into force), and expressions defined in section 2 of that Act have effect accordingly.

(3) In the application of the Midland Metro Acts to this Order—

- (a) the reference to section 56 (the Transport Consultative Committees) of the Transport Act 1962⁽²⁸⁾ in section 17(1) (transport consultative committee) of the 1989 Act is to be treated as a reference to section 25 (proposal to discontinue excluded services) of the Railways Act 2005⁽²⁹⁾ and for the words from “as if” until the end of that subsection substitute “these services were special procedure excluded services for the purpose of that section”;
- (b) references to the railway in section 46(1) (power to lop trees overhanging railway) of the 1989 Act are to be treated as including the authorised tramway;
- (c) the reference in section 47 (removal of obstructions) of the 1989 Act to any tramway is to be treated as a reference to the authorised tramway;
- (d) references to railway premises in sections 49 (byelaws relating to Metro) and 52 (power to contract for police) of the 1989 Act are to be treated as including any premises of the Executive used in connection with the operation or maintenance of the authorised tramway.

(4) Section 8(4) (further works and powers) of the 1989 Act is to have effect for the purposes of the authorised tramway as it has effect for the purposes of the tramways authorised by that Act.

(5) In this article—

“the (No. 2) 1992 Act” means the Midland Metro (No. 2) Act 1992⁽³⁰⁾;

“the 1992 Act” means the Midland Metro Act 1992⁽³¹⁾; and

“the Midland Metro Acts” means the 1989 Act, the Midland Metro (Penalty Fares) Act 1991, the 1992 Act and the (No. 2) 1992 Act.

(27) 1991 c. ii.
 (28) 1962 c. 46.
 (29) 2005 c. 14.
 (30) 1992 c. viii.
 (31) 1992 c. vii.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

6.—(1) The Executive may construct and maintain the street tramway authorised as part of Work No. 2 by the 2005 Order on a revised alignment within Paradise Circus Queensway as widened as part of the Paradise Circus development, 23 metres north of the centre line shown on the works plan referred to in that Order.

(2) Subject to article 7 (power to deviate, etc.), the authorised tramway may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the deposited section.

(3) Subject to paragraph (6), the Executive may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised tramway namely—

- (a) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised tramway;
- (b) works for the strengthening, alteration or demolition of any building or structure;
- (c) works to install, or alter the position of, any apparatus or street furniture, including mains, sewers, drains, cables and lights;
- (d) works to construct and maintain retaining walls;
- (e) landscaping, environmental and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
- (f) works for the benefit or protection of premises affected by the authorised works.

(4) Subject to paragraph (6), the Executive may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised tramway.

(5) Where the Executive lays down conduits for the accommodation of cables or other apparatus for the purposes of the authorised works or associated traffic control, it may provide in, or in connection with, such conduits, accommodation for the apparatus of any other person, and manholes and other facilities for access to such accommodation, and may permit the use of such conduits and facilities on such terms and conditions as may be agreed between it and such other person.

(6) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works—

- (a) within the limits of deviation; or
- (b) on land specified in column (1) of Part 1 or 2 of Schedule 1 (acquisition of land) for the purpose specified in relation to that land in column (2) of Part 1 or 2 of that Schedule.

(7) The Executive may remove any works constructed by it under this Order which have been constructed as temporary works or which it no longer requires.

(8) In constructing and maintaining the works authorised by the 2005 Order the Executive may carry out works to widen the highway within the numbered plots 02 and 03 shown on the land plan.

(9) In this article the Paradise Circus development means a development in accordance with the planning permission.

Power to deviate, etc.

- 7.—(1) In constructing or maintaining the authorised tramway, the Executive may—
- (a) deviate laterally from the lines or situations shown on the works plan within the limits of deviation; and
 - (b) subject to article 8(3)(b) and (c) (power to alter layout, etc., of streets), deviate vertically from the levels shown on the deposited section—
 - (i) to any extent not exceeding 3 metres upwards; and
 - (ii) to any extent downwards as may be necessary or expedient.
- (2) The Executive may in constructing or maintaining the authorised tramway lay down—
- (a) double lines of rails in place of single lines;
 - (b) single lines of rails in place of double lines;
 - (c) interlacing lines of rails in place of double or single lines; or
 - (d) double or single lines of rails in place of interlacing lines.
- (3) The power conferred by paragraph (2) must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

Streets

Power to alter layout, etc., of streets

- 8.—(1) The Executive may realign the kerbline of the highway at—
- (a) the junction of Paradise Street and Suffolk Street Queensway between points A1 and A2 shown on the works plan; and
 - (b) at the junction of Bridge Street and Broad Street between points A3 and A4 so shown.
- (2) Without limitation on the scope of the powers conferred by article 6 (power to construct and maintain works) or paragraph (1) but subject to paragraph (3)(a), the Executive may for the purpose of constructing, maintaining or using the authorised tramway alter the layout of any street in the City along which the tramway is or is to be laid, and the layout of any street adjacent to such a street; and, without limitation on the scope of that power, the Executive may—
- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
 - (b) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
 - (c) construct, alter or remove traffic islands and central reserves;
 - (d) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for tramcars or by carrying out other works for that purpose;
 - (e) carry out strengthening and remedial works to the highway;
 - (f) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the tramway;
 - (g) make and maintain crossovers, sidings or passing places; and
 - (h) carry out works for the provision or alteration of parking places.
- (3) The following require the consent of the street authority—
- (a) the exercise of the powers conferred by paragraph (2);

- (b) the exercise of the power to deviate conferred by article 7(1)(b) (power to deviate, etc.) with respect to the construction or maintenance of the authorised tramway, where it would require the alteration of the level of the carriageway of the street carrying the tramway;
 - (c) the exercise of the power to deviate conferred by article 7(1)(b) with respect to the construction or maintenance of the authorised tramway comprising the alteration of the level or alignment of a highway; or
 - (d) the exercise of the power conferred by article 9 (power to keep apparatus in streets) with respect to the placing in the street of supports for overhead line equipment for the authorised tramway.
- (4) Consent under paragraph (3) must not be unreasonably withheld.

Power to keep apparatus in streets

9.—(1) The Executive may, subject to article 8(3)(d) (power to alter layout, etc., of streets), for the purposes of or in connection with the construction, maintenance and use of the authorised tramway, place and maintain in any street in which the tramway is or is to be laid and in any street having a junction with such a street any work, equipment or apparatus including but without limitation on the scope of that power, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;
- (b) “electric line” has the meaning given by section 64(1) (interpretation etc. of Part 1) of the Electricity Act 1989(32); and
- (c) the reference to any work, equipment or apparatus in a street includes a reference to any work, equipment or apparatus under, over, along or upon the street.

Power to execute street works

10. The Executive may, for the purpose of exercising the powers conferred by article 9 (power to keep apparatus in streets) and the other provisions of this Order, enter upon any street in which the authorised tramway is or is to be laid and any street having a junction with such a street, and may execute any works required for or incidental to the exercise of those powers including, without limitation on the scope of that power, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

Temporary stopping up of streets

11.—(1) The Executive may, during and for the purposes of the execution of the Order works, temporarily stop up, alter or divert any street in the City and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The Executive must provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) The Executive must not exercise the powers conferred by this article without the consent of the street authority, but such consent must not be unreasonably withheld.

(32) 1989 c. 29.

(4) 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.

Access to works

12.—(1) The Executive may, for the purposes of the construction or operation of the Order works, form and lay out means of access, or improve existing means of access in such locations within the Order limits as may be approved by the highway authority.

(2) Approval of the highway authority under paragraph (1) must not be unreasonably withheld.

Restoration of streets if street tramway discontinued

13. If the Executive permanently ceases to operate the authorised tramway (“the discontinued tramway”), it must as soon as reasonably practicable and unless otherwise agreed with the street authority—

- (a) remove from any street in which the discontinued tramway is laid the rails and any other works, equipment and apparatus which have become redundant; and
- (b) restore, to the reasonable satisfaction of the street authority, the portion of the street along which the discontinued tramway was laid, regard being had to the condition of the street before the tramway was laid.

Agreements with street authorities

14.—(1) A street authority and the Executive may enter into agreements with respect to—

- (a) the construction of any new street under the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (c) the execution in the street of any of the works referred to in article 10 (power to execute street works).

(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; and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Supplemental powers

Discharge of water

15.—(1) The Executive may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the Order works and for that purpose may, on any land within the Order limits, lay down, take up and alter pipes and make openings into, and connections with, the watercourse, sewer or drain.

(2) Any dispute arising from the exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(33).

(33) 1991 c. 56. Section 106 was amended by sections 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(3) The Executive must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose but must not be unreasonably withheld.

(4) The Executive must not make any opening into any public sewer or drain except in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld.

(5) The Executive must not, in exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The Executive must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010⁽³⁴⁾.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991⁽³⁵⁾ have the same meaning as in that Act.

Safeguarding works to buildings

16.—(1) Subject to the following provisions of this article the Executive may at its own expense and from time to time carry out such safeguarding works to any building which is within the Order limits as the Executive considers to be necessary or expedient.

(2) Safeguarding works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the Order works; or
- (b) after the completion of the construction of that part of the Order works in the vicinity of the building, at any time up to the end of the period of 5 years beginning with the day on which that part of the Order works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised, the Executive may (subject to paragraph 5) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out safeguarding works under this article to a building the Executive may (subject to paragraphs (5) and (6))—

- (a) enter the building and land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out safeguarding works to a building;

⁽³⁴⁾ S.I. 2010/675, as amended by S.I. 2011/2043 and S.I. 2013/390; there are other amending instruments but none are relevant.
⁽³⁵⁾ 1991 c. 57.

- (b) a right under paragraph (3) to enter a building and any land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the Executive must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the safeguarding works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 45 (arbitration).

(7) The Executive must compensate the owners and occupiers of any building or land in relation to which the powers conferred by this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) safeguarding works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed within the vicinity of the building is first opened for use, it appears that the safeguarding works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,

the Executive must compensate the owners and occupiers of the building for any damage sustained by them.

(9) Without affecting article 42 (no double recovery) nothing in this article relieves the Executive from any liability to pay compensation under section 10(2)(36) (further provision as to compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) This article does not apply to any of the land specified in column (1) of Part 2 of Schedule 1 (acquisition of rights only).

(12) In this article “safeguarding works”, in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

Power to construct temporary tramways

17.—(1) The Executive may, if it considers it necessary or expedient in consequence of any street works executed or proposed to be executed in a street along which the authorised tramway is constructed—

- (a) remove or discontinue the operation of the authorised tramway; and
- (b) lay, maintain and operate in that street or in a street near to that street a temporary tramway in place of the authorised tramway.

(36) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(2) The powers conferred by this article may only be exercised with the consent of the street authority but such consent may not be unreasonably withheld.

(3) The provisions of articles 8(2) (power to alter layout, etc. of streets), 9 (power to keep apparatus in streets), 10 (power to execute street works) and 33 (traffic signs) apply in relation to temporary tramways laid under this article as they apply in relation to the authorised tramway.

Power to survey and investigate land

18.—(1) The Executive may, in relation to any land within the Order limits, for the purposes of this Order—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the Executive thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out archaeological investigations on the land;
- (d) take steps to protect or remove any flora or fauna on the land where the flora or fauna may be affected by the carrying out of the Order works;
- (e) place on, leave on and remove from the land apparatus for use in connection with the exercise of any powers conferred by sub-paragraphs (a) to (d); and
- (f) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (e).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the Executive—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and
- (b) may take onto land such vehicles and equipment as are necessary for the purpose of exercising any of the powers conferred by paragraph (1).

(4) No trial hole may be made under this article in a carriageway or footway without the consent of the highway authority, but such consent must not be unreasonably withheld.

(5) The Executive must pay compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Mode of construction and operation of tramway

19.—(1) The authorised tramway must be operated by electricity or, in an emergency or for the purposes of construction or maintenance, by diesel power or other means.

(2) The authorised tramway must be constructed to a nominal gauge of 1,435 millimetres.

(3) Where a tramway is constructed along a street or in any place to which the public has access (including any place to which the public has access only on the making of a payment), the Executive must take such care as in all the circumstances is reasonable to ensure that the tramway is constructed and maintained so that the street or other place is safe for other users.

(4) When considering what measures are required under paragraph (3), the Executive must have particular regard to the character and usage of the street or other place and to those who could reasonably be expected to use it.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

20. The Executive may acquire compulsorily so much of the land in the City specified in column (1) of Part 1 of Schedule 1 (acquisition of land) (being land shown on the land plan and described in the book of reference) as may be required for any of the purposes specified in relation to that land in column (2) of that Part and may use any land so acquired for those purposes or for any other purposes that are ancillary to its tramway undertaking.

Application of Part 1 of the 1965 Act

21.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the 1981 Act applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as so applied, has effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(37) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981 has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession), and
- (b) published in a local newspaper circulating in the area in which the land is situated.

(4) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

- (6) In section 5 (earliest date for execution of declaration)—
- (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and
 - (b) omit subsection (2).
- (7) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (8) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 20 (power to acquire land).

Power to acquire new rights

23.—(1) The Executive may acquire compulsorily such easements or other rights over any land in the City referred to in article 20 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision.

(2) Subject to paragraph (4) the Executive may acquire compulsorily such easements or other rights over any land in the City specified in column (1) of Part 2 of Schedule 1 (acquisition of rights only) (being land shown on the land plan and described in the book of reference) as may be required for any of the purposes specified in relation to that land in column (2) of that Part.

(3) In paragraphs (1) and (2), the power compulsorily to acquire easements or other rights includes the power to do so by creating them as well as by acquiring easements or other rights already in existence.

(4) In exercising its powers under paragraph (2) the Executive may not acquire rights over plots 16, 17, 18, 19, 20, 21, 23, 24, 25, 31 and 32 unless any existing buildings in those plots have been demolished in accordance with the planning permission.

(5) Subject to section 8 (other provisions as to divided land) of the 1965 Act (as substituted by paragraph 5 of Schedule 2 (modification of compensation and compulsory purchase enactments for creation of new rights)), where a right over land is acquired under paragraph (1) or (2) the person acquiring the right is not required to acquire a greater interest in the land.

(6) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the Executive may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(7) Schedule 2 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this Order of a right over land by the creation of a new right.

Rights under or over streets

24.—(1) The Executive may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the Order works and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised tramway.

(2) Subject to paragraph (4) the power under paragraph (1) may be exercised in relation to a street without the Executive being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the Executive acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power is entitled

to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in or on a street which forms part of a building fronting on to the street.

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary possession of land

Temporary use of land for construction of works

25.—(1) The Executive may, in connection with the carrying out of the authorised works—

(a) enter upon and take temporary possession of—

- (i) any of the land in the City specified in column (1) of Schedule 3 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule, and
- (ii) any of the relevant land in respect of which no notice of entry has been served under section 11(38) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration of the Compulsory Purchase (Vesting Declarations) Act 1981;

(b) remove any buildings and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on the land; and

(d) construct any permanent works specified in relation to that land in column (2) of Schedule 3 or any mitigation works on that land.

(2) Not less than 28 days before entering upon and taking temporary possession of land under this article the Executive must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Executive may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of any land specified in column (1) of Schedule 3 (land of which temporary possession may be taken), after the end of the period of one year beginning with the date of completion of the works specified in relation to that land in column (2) of Schedule 3; or

(b) in the case of the relevant land, after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken unless the Executive has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Executive must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Executive is not required to replace a building removed

(38) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

under this article or restore the land on which any works have been constructed under paragraph (1) (d).

(5) The Executive must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Without affecting article 42 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection)(39) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a) except that the Executive is not to be precluded from acquiring new rights over any land specified in Part 2 of Schedule 1 (acquisition of land and rights) under article 23 (power to acquire new rights).

(9) Where the Executive takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority)(40) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 21(1) (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(a)(ii) does not authorise the Executive to take temporary possession of—

- (a) any dwelling house or garden belonging to a dwelling house; or
- (b) any building (other than a dwelling house) if it is for the time being occupied.

(12) In this article “the relevant land” means any land within the Order limits other than—

- (a) the land specified in column (1) of Part 2 of Schedule 1 (acquisition of land); and
- (b) the land specified in column (1) of Schedule 3 to this Order.

Temporary use of land for maintenance of works

26.—(1) Subject to paragraph (2), at any time during the maintenance period relating to the Order works, the Executive may—

- (a) enter upon and take temporary possession of any land within the Order limits and lying within 20 metres from those works if such possession is reasonably required for the purpose of maintaining the works or any ancillary works connected with them; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the Executive to take temporary possession of—

- (a) any house or garden belonging to a house;
- (b) any building (other than a house) if it is for the time being occupied; or

(39) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(40) Section 13 was amended by sections 62(3) and 139 of, and paragraph 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (c) any land specified in column (1) of Part 2 of Schedule 1 (acquisition of land and rights) (but without affecting the power to acquire rights under article 23(2) (power to acquire new rights) in relation to that land).
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Executive must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The Executive may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the Executive must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The Executive must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (8) Without affecting article 42 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the Executive takes possession of land under this article, it is not required to acquire the land or any interest in it.
- (10) Section 13 (refusal to give possession to acquiring authority)(41) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 21(1) (application of Part 1 of the 1965 Act).
- (11) In this article—
- (a) “the maintenance period”, in relation to the Order works, means the period of 5 years beginning with the date on which the work is opened for use; and
 - (b) any reference to land within a specified distance of a work includes, in the case of work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

Compensation

Disregard of certain interests and improvements

27.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(41) As amended by sections 62(3) and 139(4)-(9) of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Acquisition of part of certain properties

28.—(1) This article applies instead of section 8(1)(42) (other provisions as to divided land) of the 1965 Act (as applied by article 21 (application of the 1965 Act)) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming part only of a house, building or manufactory or part only of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the Executive a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner must sell only the land subject to the notice to treat is, unless the Executive agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Executive is authorised to acquire compulsorily under this Order.

(8) If the Executive agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Executive is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the Executive may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so it must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell part only of a house, building or manufactory or part only of land consisting of a house with a park or garden, the Executive must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of rights of way

29.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the Executive, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Executive under section 11(1) or (2) (powers of entry) of the 1965 Act,

whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land of which the Executive takes temporary possession under this Order are suspended and unenforceable for as long as the Executive remains in lawful possession of the land.

(3) Any person who suffers loss by the extinguishment or 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.

(4) This article does not apply in relation to any right of way to which section 271 or 272 (extinguishment of rights of statutory undertakers etc.)⁽⁴³⁾ of the 1990 Act applies.

(5) Paragraphs (1) and (2) have effect subject to any agreement made (whether before or after this Order comes into force) between the Executive and the person entitled to the private right of way.

(6) Paragraph (1) has effect subject to any notice given by the Executive that that paragraph is not to apply to any right of way specified in the notice where the notice is given before whichever is the soonest of the events specified in sub-paragraphs (a) or (b) of that paragraph.

(7) Paragraph (2) has effect subject to any notice given by the Executive at any time before or after possession is taken that that paragraph is not to apply to any right of way specified in the notice or is only to apply to the right of way to the extent specified in the notice.

⁽⁴³⁾ Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(8) This article does not apply to any of the land specified in column (1) of Part 2 of Schedule 1 (acquisition of land).

Time limit for exercise of powers of acquisition

30.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 21 (application of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981(44), as applied by article 22 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 25 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the Executive remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

OPERATION OF TRAMWAY SYSTEM

Power to operate and use tramway system

31.—(1) The Executive may operate and use the authorised tramway and the other Order works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Subject to paragraph (4) and to section 54 (powers of disposal, agreements for operation, etc.) of the 1989 Act (as applied by article 5 (application of the Midland Metro Acts)), the Executive has, for the purpose of operating the authorised tramway, the exclusive right—

- (a) to use the rails, foundations, cables, masts, overhead wires and other apparatus used for the operation of the tramway; and
- (b) to occupy that part of the street in which that apparatus is situated.

(3) Any person who, without the consent of the Executive or other reasonable excuse, uses the apparatus mentioned in paragraph (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Nothing in this article restricts the exercise of any public right of way over any part of a street in which apparatus referred to in paragraph 2 is situated except to the extent that the exercise of the right is constrained by the presence of the apparatus.

Power to charge fares

32. The Executive may demand, take and recover or waive such charges for carrying passengers or goods on tramcars using the authorised tramway or for any other services or facilities provided in connection with the operation of the authorised tramway, as it thinks fit.

(44) 1981 c.66.

Traffic signs

33.—(1) The Executive may, for the purposes of, or in connection with the operation of, the authorised tramway, place or maintain traffic signs on or near any street along which tramcars using the authorised tramway are run.

(2) The Executive—

- (a) must consult with the traffic authority as to the placing of signs; and
- (b) unless the traffic authority is unwilling to do so and subject to any directions given under section 65 (powers and duties of highway authorities as to the placing of traffic signs)(45) of the 1984 Act, must enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs includes a power to give directions to the Executive as to traffic signs under this article; and, the powers conferred by paragraph (1) are exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on or near any street along which tramcars using the authorised tramway are run, must consult with the Executive as to the placing of any traffic sign which would affect the operation of the authorised tramway.

(5) Tramcars are taken to be public service vehicles for the purposes of section 122(2)(c) (exercise of functions by local authorities) of the 1984 Act.

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

Obstruction of construction of authorised works

34. Any person who, without reasonable excuse, obstructs another person from constructing the authorised tramway or any other Order works under the powers conferred by this Order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 5

MISCELLANEOUS AND GENERAL

Planning permission

35. Planning permission, which is deemed by a direction under section 90(2A)(46) (development with government authorisation) of the 1990 Act to be granted in relation to the Order works, is to be treated as specific planning permission for the purposes of section 264(3)(a)(cases in which land is to be treated as operational land for the purposes of that Act) of that Act.

Statutory undertakers, etc.

36. Schedule 4 (provisions relating to statutory undertakers, etc.) has effect.

(45) As amended by section 153 of the Local Government and Housing Act 1989 (s. 42), section 168(1) of, and paragraph 48 of part 2 of Schedule 8 to, the 1991 Act and section 48 of, and paragraph 29 of Schedule 4 to, the Road Traffic Act 1991 (c. 40).

(46) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

Existing agreements

37. The agreements listed in Schedule 5 (existing agreements) apply in relation to the exercise of the powers conferred by this Order as they apply to the exercise of the powers of the 2005 Order.

Minerals

38.—(1) Parts 2 and 3 of Schedule 2 (exception of minerals from compulsory purchase and regulation of the working of mines or minerals underlying an authorised undertaking) to the 1981 Act have effect in relation to land to which article 20 (power to acquire land) applies as if it were comprised in a compulsory purchase order providing for the incorporation with that order of those Parts of that Schedule.

(2) In their application under paragraph (1), Parts 2 and 3 of Schedule 2 to the 1981 Act have effect with the following modifications—

- (a) references to the acquiring authority are to be construed as references to the Executive; and
- (b) references to the undertaking are to be construed as references to the undertaking which the Executive is authorised by this Order to carry on.

Saving for highway authorities

39. Nothing in this Order affects any power of a highway authority to widen, alter, divert or improve any highway along which the authorised tramway is constructed or operated.

Certification of plans, etc.

40. The Executive must, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited section, the land plan and the works plan to the Secretary of State for certification that they are, respectively, true copies of the book of reference, the deposited section, the land plan and the works plan referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

41.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978⁽⁴⁷⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

⁽⁴⁷⁾ 1978 c. 30.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

42. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Disclosure of confidential information

43. A person who—

- (a) enters a factory, workshop or workplace under article 16 (safeguarding works to buildings) or 18 (power to survey and investigate land); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of that person’s performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Withholding of consent

44. Where it is provided in this Order that any consent or approval is not to be unreasonably withheld, any dispute as to whether it is so unreasonably withheld or as to any conditions subject to which it is given is (where no other provision is made in this Order with respect to the determination in question) to be determined by arbitration.

Arbitration

45. Where under this Order (including any provision incorporated in or applied by this Order) any difference (other than a difference to which the provisions of the 1965 Act apply) is to be determined by or referred to arbitration, then the difference must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed, on the application of either party (after notice in writing to the other), by the President of the Institution of Civil Engineers.

Protective provisions for Network Rail

46. Schedule 6 (protective provisions for Network Rail) has effect.

Signed by authority of the Secretary of State

Martin Woods
Head of the Transport and Works Act Orders
Unit
Department for Transport

24th May 2016

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SCHEDULES

SCHEDULE 1

Articles 6, 20 and 23

ACQUISITION OF LAND AND RIGHTS

PART 1

ACQUISITION OF LAND

<i>(1)</i> <i>Number of land shown on the land plan</i>	<i>(2)</i> <i>Purposes for which land may be acquired</i>
03	Widening of highway and hard landscaping in connection with the authorised works.
05, 37, 38, 43, 44, 45, 46, 47, 48	Construction and maintenance of the authorised works.
06, 07	Installation and maintenance of overhead power apparatus and supports and hard landscaping in connection with the authorised works.
34, 35, 36	Construction and maintenance of the Order works.
39	Discontinuance of unused exit and hard landscaping in connection with the authorised works.
41	Provision of gate and construction of wall in connection with the authorised works.

PART 2

ACQUISITION OF RIGHTS ONLY

<i>(1)</i> <i>Number of land shown on the land plan</i>	<i>(2)</i> <i>Purposes for which right may be acquired</i>
04	For the purposes of placing and maintaining utility apparatus.
08, 15, 22, 33	For the diversion of utility apparatus.
09, 10, 12, 13, 16, 17, 18, 19, 20, 21, 23, 24, 25, 29, 30, 31, 32	For the purposes of placing and maintaining equipment and apparatus, maintaining retaining walls and diversion of utility apparatus.

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(1) <i>Number of land shown on the land plan</i>	(2) <i>Purposes for which right may be acquired</i>
14	For the purposes of strengthening works to the Easy Row subway and diversion of utility apparatus.

SCHEDULE 2

Article 23

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation to the scope of paragraph 1, the Land Compensation Act 1973(48) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken”, substitute “a right over land is purchased”; and
- (b) for the words “acquired or taken from him”, substitute “over which the right is exercisable”.

(3) For section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition)(49), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5, substitute—

“(1) In determining under section 8(1) and 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over land consisting of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or
- (b) a right over land consisting of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right but also the use to be made of the right to be acquired, and, in a case where the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”.

(48) 1973 c. 26.

(49) As amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

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Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 (other provisions as to divided land) of the 1965 Act substitute—

“8.—(1) Where, in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would, apart from this section, fall to be determined by the Lands Chamber of the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land, and is able and willing to sell that interest and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Midland Metro (Birmingham City Centre Extension, etc.) (Land Acquisition and Variation) Order 2016⁽⁵⁰⁾ (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(50) S.I. 2016/545

(3) Where, in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section, the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection affects any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11(51) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, they have power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(52) (penalty for unauthorised entry) and 13(53) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(54) (protection of interests of tenants at will etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(51) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(52) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(53) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(54) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

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SCHEDULE 3

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Number of land shown on the land plan</i>	<i>(2)</i> <i>Purposes for which temporary possession may be taken</i>
01	Construction of permanent hard standing on that land
02, 09 10, 11, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 31, 32, 40	Construction access and working site
04, 42, 49	Construction of permanent works on that land to tie in differing levels

SCHEDULE 4

Article 36

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc., on land acquired

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274⁽⁵⁵⁾ (extinguishment of rights of statutory undertakers etc.) of the 1990 Act apply in relation to any land which has been acquired under this Order, or which is held by the Executive and is appropriated or used (or about to be used) by it for the purposes of this Order or for purposes connected with this Order; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282⁽⁵⁶⁾, which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1)—

- (a) references to the appropriate Minister are references to the Secretary of State;
- (b) references to the purpose of carrying out any development with a view to which land was acquired or appropriated are references to the purpose of carrying out the authorised works; and
- (c) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired, appropriated or used as mentioned in sub-paragraph (1).

(3) Where any apparatus of public utility undertakers or of an operator of an electronic communications code network is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Executive compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

⁽⁵⁵⁾ Section 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

⁽⁵⁶⁾ Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.

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(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the Executive compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which Part 3 of the 1991 Act applies (including that Part as applied by article 3).

(6) In this paragraph—

“electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984⁽⁵⁷⁾;

“electronic communications code network” means an electronic communications network within the meaning of the Communications Act 2003⁽⁵⁸⁾ to which the electronic communications code applies; and

“public utility undertakers” has the same meaning as in the Highways Act 1980⁽⁵⁹⁾.

Application of electronic communications code

2.—(1) Paragraph 21 of the electronic communications code does not apply for the purposes of the Order works to the extent that such works are regulated by Part 11 of the 1990 Act, sections 84 and 85 of the 1991 Act (or regulations made under section 85 of that Act) or sub-paragraph (3).

(2) Paragraph 23 of the electronic communications code applies for the purposes of the Order works, except—

- (a) in so far as such works are regulated by the 1991 Act or any regulation made under that Act; or
- (b) where the Executive exercises a right under subsection (4)(b) of section 272 of the 1990 Act or under an order made under that section to remove apparatus.

(3) The temporary stopping up, alteration or diversion of any highway under article 11 (temporary stopping up of streets) does not affect any right of an operator of an electronic communications code network under paragraph 9 of the electronic communications code in respect of any apparatus which at the time of the stopping up or diversion is in the highway.

(4) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act; and

“electronic communications code” and “electronic communications code network” have the same meanings as in paragraph 1(6).

⁽⁵⁷⁾ 1984 c. 12; Schedule 2 was amended by section 190 of, and paragraph 68 of Schedule 25 and part 1 of Schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and Schedule 18 to, the Electricity Act (c. 29), paragraphs 113–115 of Schedule 8 and Schedule 9 to the 1991 Act, section 107(2) of, and Schedule 4 to, the Arbitration Act 1996 (c. 23), section 25(1) of, and paragraph 22 of Schedule 3 to, the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), section 406(7) of, and Schedule 3, paragraph 75 of Schedule 17 and Schedule 19 to, the Communications Act 2003 (c. 21), section 80(3) of and part 2 of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23), S.I. 1993/3160, S.I. 2006/1177 and S.I. 2009/1307.

⁽⁵⁸⁾ 2003 c. 21.

⁽⁵⁹⁾ 1980 c. 66.

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SCHEDULE 5

Article 37

EXISTING AGREEMENTS

<i>(1)</i>	<i>(2)</i>
<i>Party to agreement</i>	<i>Date of agreement</i>
Aquila Networks PLC (now Western Power Distributions (West Midlands) PLC)	2nd January 2004
Argent Estates Limited	15th July 2004
Carlton Television Limited	14th August 2003
Hortellux Limited and Hortons' Estate Limited	26th January 2004
Hyatt Regency Birmingham Limited	15th December 2003
Kenmore Quayside Limited and Kenmore Property Group Limited	1st December 2003
NTL (Broadband) NTL Group Limited	10th February 2004
Radovan Vuckovic and Wolf's Limited	7th June 2004
Royal Mail PLC (now Royal Mail Group Limited) and Post Office Limited	5th January 2004
Scottish Mutual Assurance plc	10th March 2004
Severn Trent Water Limited	5th January 2004
Transco PLC (now National Grid Gas PLC)	14th June 2004

SCHEDULE 6

Article 46

PROTECTIVE PROVISIONS FOR NETWORK RAIL

1. The following provisions of this Schedule have effect unless otherwise agreed in writing between the Executive and Network Rail and, in the case of paragraph 14, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct”, and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8(60) (licences) of the 1993 Act;

“Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any

(60) Section 8 was amended by paragraph 3 of Schedule 20 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 1 of Schedule 13(1) to the Railways Act 2005 (c. 14) and paragraph 4 of Schedule 17 to the Transport Act 2000 (c. 38). There are other amendments not relevant to this Order.

associated company of Network Rail which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of subsidiaries etc.) of the Companies Act 2006⁽⁶¹⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the 1993 Act) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment;

“specified work” means so much of any of the Order works as are situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) The Executive must not exercise the powers conferred by article 18 (power to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Executive must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The Executive must not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(4) The Executive must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act, as applied by Schedule 4, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent or agreement pursuant to sub-paragraphs (1), (2), (3) or (4), such consent or agreement must not be unreasonably withheld but may be given subject to reasonable conditions.

4.—(1) The Executive must, before commencing construction of any specified work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the Executive that Network Rail desires itself

⁽⁶¹⁾ 2006 c. 46.

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to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Executive desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Executive in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the Executive.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using those railways (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the Executive, if Network Rail so desires, and such protective works are to be carried out at the expense of the Executive in either case with all reasonable dispatch and the Executive must not commence the construction of the specified works until the engineer has notified the Executive that the protective works have been completed to the engineer's reasonable satisfaction.

5.—(1) Any specified work and any protective works to be constructed under paragraph 4(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 4(1);
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause as little damage as is possible to railway property and as little interference as may be with the conduct of traffic on the railways of Network Rail,

and if any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the Executive must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(2) The Executive must give to the engineer no less than 180 days' notice of its intention to commence the construction of a specified work and must give, except in emergency (when it must give such notice as may be reasonably practicable), 90 days' notice of its intention to carry out any works for the maintenance or repair of a specified work in so far as such work of repair or maintenance may affect railway property.

(3) Nothing in this Schedule imposes any liability on the Executive with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the Executive or its servants, contractors or agents.

6. The Executive must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

7. Network Rail must at all times afford reasonable facilities to the Executive and its agents for access to any works carried out by Network Rail under this Schedule during their construction and

must supply the Executive with such information as it may reasonably require with regard to such works or the method of constructing them.

8.—(1) If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 4(4), are reasonably necessary in consequence of the construction of a specified work such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Executive reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Executive must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Executive, Network Rail gives notice to the Executive that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Executive decides that that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the Executive must, regardless of any such approval of a specified work under paragraph 4(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 9(a) provide such details of the formula by which those sums have been calculated as the Executive may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the Executive to Network Rail under this paragraph.

9. The Executive must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the Executive as provided by paragraph 4(3) or in constructing any protective works under the provisions of paragraph 4(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the Executive and the supervision by the engineer of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Schedule;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch keepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

10.—(1) In this paragraph—

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“EMP” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the Order works where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the Order works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 4(1) for the relevant part of the Order works giving rise to EMI (unless the Executive has been given notice in writing before the approval of those plans of the intention to make such change) other than any change carried out by Network Rail as part of, or in consequence of, the Order works.

(3) Subject to sub-paragraph (5), the Executive must in the design and construction of the Order works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Executive’s compliance with sub-paragraph (3)—

- (a) the Executive must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and subsequently must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 4(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the Executive all information in the possession of Network Rail reasonably requested by the Executive in respect of Network Rail’s apparatus identified under sub-paragraph (a); and
- (c) Network Rail must allow the Executive reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 4(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of commercial operation of the Order works and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the Order works causes EMI then the Executive must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) immediately cease to use (or procure the cessation of use of) the Executive’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the Executive must afford reasonable facilities to Network Rail for access to the Executive’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the Executive for access to Network Rail’s apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the Executive any additional material information in its possession reasonably requested by the Executive in respect of Network Rail’s apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraph (5) or (6)—

- (a) Network Rail must allow the Executive reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the Executive in accordance with paragraph 5.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 14(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 9(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 45 (arbitration) to an arbitrator to be agreed is to be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers.

11.—(1) If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the Executive informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the Executive must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

(2) If at any time after the completion of a specified work, being a work vested in Network Rail, the Executive gives notice to Network Rail informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of the authorised tramway, Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect the authorised tramway.

12. The Executive must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

13. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Executive, are to be repaid by the Executive to Network Rail.

14.—(1) The Executive must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure of a specified work; or
- (b) by reason of any act or omission of the Executive or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the Executive must indemnify Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that

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any act or thing may have been done by Network Rail on behalf of the Executive or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the Executive from any liability under the provisions of this Schedule.

(2) Network Rail must give the Executive reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the Executive, such consent not to be unreasonably withheld.

(3) The sums payable by the Executive under sub-paragraph (1) must include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the 1993 Act.

15. Network Rail must, on receipt of a request from the Executive, from time to time provide the Executive free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Executive is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 14) and with such information as may reasonably enable the Executive to assess the reasonableness of any such estimate or claim made or to be made under this Schedule (including any claim relating to those relevant costs).

16. In the assessment of any sums payable to Network Rail under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Executive under this Schedule or increasing the sums so payable.

17. The Executive and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the Executive of—

- (a) any railway property shown on the deposited plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

18. Any difference between Network Rail and the Executive arising under this Schedule is to be referred to arbitration under article 45 (arbitration).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers further powers of compulsory acquisition on the West Midlands Passenger Transport Executive (“the Executive”) for the purpose of the works authorised by the Midland Metro (Birmingham City Centre Extension, etc.) Order 2005 (“the 2005 Order”). Powers for compulsory acquisition under the 2005 Order expired on 22nd July 2010.

The Order also authorises variation of the alignment of the tramway authorised by the 2005 Order within Paradise Circus Queensway as included as part of the Paradise Circus Development and confers compulsory powers for the acquisition of the small amount of additional land required for this purpose. The Order also confers powers (including powers to acquire land compulsorily) to enable the Executive to carry out a minor adjustment to the development authorised by the 2005 Order outside the Paradise Circus area.

A copy of the land plan, the works plan, the deposited section and the book of reference referred to in this Order may be inspected at the offices of the Executive at Centro House, 16 Summer Lane, Birmingham, B19 3SD.