
STATUTORY INSTRUMENTS

1996 No. 2714

The Greater Manchester (Light Rapid Transit System) (Eccles Extension) Order 1996

PART V

PROTECTIVE PROVISIONS

Statutory undertakers, etc.

48. The provisions of Schedule 9 to this Order shall have effect.

For protection of British Railways Board

49. For the protection of the railways board, the following provisions shall, unless otherwise agreed in writing between the undertaker and the railways board, have effect—

“(1) In this article—

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

“specified works” has the meaning given by article 50 of this Order.

(2) The undertaker shall be responsible for and make good to the railways board all losses (including revenue losses) and reasonable costs, charges, damages and expenses not otherwise provided for in this article (and which would not otherwise be recoverable from a third party) which may be occasioned to or reasonably incurred by the railways board—

(a) by reason of the construction or maintenance of the specified works or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any persons in their employ or of their contractors or others whilst engaged upon the specified works;

and the undertaker shall effectively indemnify and hold harmless the railways board from and against all claims and demands arising out of or in connection with the specified works or any such failure act or omission as aforesaid and the fact that any act or thing may have been done by the railways board on behalf of the undertaker shall not (if it was done without negligence on the part of the railways board or of any person in their employ or of their contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph:—

Provided that the railways board shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

(3) In the assessment of compensation payable under this article there shall not be taken into account any enhancement of that compensation attributable to any action taken by or any agreement entered into by the railways board if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining compensation

or increased compensation and for the avoidance of doubt any reference in this paragraph to compensation shall be deemed to relate to any payment due to the railways board under this article.”

For protection of Railtrack

50. For the protection of Railtrack the following provisions shall, unless otherwise agreed in writing between the undertaker and Railtrack, have effect:—

“(1) In this article—

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

“the engineer” means an engineer to be appointed by Railtrack;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction) staging proposals and programmes;

“Railtrack” means Railtrack plc and includes any person (other than a person falling within the definition of the railways board) who derives title to any property from Railtrack and holds that property for railway purposes;

“railway property” means any railway of Railtrack and any works, apparatus and equipment of Railtrack connected therewith and includes any land held or used by Railtrack for the purposes of such railway or works, apparatus or equipment;

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

(a) (2) The undertaker shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Railtrack which (except in relation to railway property consisting of a railway track or any land within 3 metres of that track) shall not be unreasonably withheld but may be given subject to reasonable conditions.

(b) The undertaker shall fence off on a temporary and permanent basis the specified works from railway property to the reasonable satisfaction of the engineer where so required by him.

(3) The undertaker shall not exercise the powers of article 21 of this Order or the powers of section 11(3) of the 1965 Act in respect of any railway property except with the consent of Railtrack which consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

(a) (4) Except with the consent of Railtrack the undertaker shall not in the exercise of the powers of this Order prevent pedestrian or vehicular access to railway property.

(b) The undertaker shall not exercise the powers of sections 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 9 to this Order, in relation to any right of access of Railtrack to railway property but such right of access may be diverted with the consent of Railtrack.

(c) The consent of Railtrack under this paragraph shall not be unreasonably withheld but may be given subject to reasonable conditions.

(5) The undertaker shall before commencing construction of the specified works supply to Railtrack proper and sufficient plans for the reasonable approval of the engineer and

shall not commence such construction of the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration—

Provided that the approval of the engineer under this paragraph shall not be unreasonably withheld or delayed and if within 56 days after such plans have been supplied to Railtrack the engineer has not intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same.

(6) If within 56 days after such plans have been supplied to Railtrack, Railtrack gives notice to the undertaker that Railtrack desires itself to construct any part of the specified works 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 Railtrack then, if the undertaker desires such part of the specified works to be constructed, Railtrack shall construct the same with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (where appropriate and if given) of the undertaker.

(7) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Railtrack or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by the specified works) and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack or by the undertaker, if Railtrack so desires, with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

(8) The specified works shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage to railway property as may be; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Railtrack or the traffic thereon and the use by passengers of railway property;

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack all reasonable expenses to which it may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(9) The undertaker shall—

- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction;
- (b) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.

(10) Railtrack shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Railtrack under this article during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of construction thereof.

(11) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof in consequence of the construction of the specified works, and Railtrack gives to the undertaker reasonable notice of its intention specifying the alterations or additions to be carried out the undertaker shall pay to Railtrack the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing the increase in the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions; provided that the engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph (12)(a) below, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require:—

Provided also that 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 shall be set off against any sum payable by the undertaker to Railtrack under this paragraph.

(12) The undertaker shall repay to Railtrack all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of the specified works on behalf of the undertaker as provided by paragraph (6) above or in constructing any protective works under the provisions of paragraph (7) above 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 employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all interference, obstruction, danger or accident arising from the construction, maintenance, or failure of the specified works;
- (c) in respect of any special traffic working resulting from any speed restrictions which are necessary as a result of the construction, maintenance, or failure of the specified works and which may in the opinion of the engineer be required to be imposed or from the substitution, suspension or diversion of services which may be necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary as a result of the specified works or the failure thereof;
- (e) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of the specified works.

(13) If at any time after the completion of the specified works, not being works vested in Railtrack, Railtrack gives notice to the undertaker informing it that the state of maintenance of the specified works appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of maintenance as not adversely to affect railway property.

(14) All temporary structures, erections, works, apparatus and appliances erected or placed by the undertaker under the powers of the Order upon, over or under any railway of Railtrack shall, as soon as reasonably practicable, be removed by the undertaker at times to be agreed with, and to the reasonable satisfaction of, the engineer and in such a way as to cause as little damage to railway property and as little interference with, or delay or interruption to, the traffic on the railways of Railtrack as may be; and if any damage to railway property or such interference, delay or interruption is caused by any such failure

to remove any such temporary structures, erections, works, apparatus or appliances, the undertaker shall forthwith make good such damage and pay to Railtrack the reasonable costs and expenses to which it may be put and reasonable compensation for any loss which it may sustain by reason of such damage, interference, delay or interruption.

(15) If it is necessary for the protection and safety of railway property for Railtrack to purchase any minerals for the support of such property or to pay compensation for any minerals to be left unworked for the support thereof and the specified works also derive support from such minerals, the undertaker shall repay to Railtrack a reasonable proportion of the amount paid by Railtrack for or in respect of such minerals and the costs and expenses incurred by Railtrack in relation to any such purchase or payment of compensation.

(16) Before providing any illumination or illuminated traffic sign on or in connection with the specified works in the vicinity of any railway of Railtrack the undertaker shall consult with Railtrack and comply with its reasonable requirements in regard thereto with a view to ensuring that such illumination or illuminated sign could not be confused with any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

(17) Any additional expenses which Railtrack may reasonably incur after giving 56 days' notice to the undertaker in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of the specified works shall be repaid by the undertaker to Railtrack.

(18) The undertaker shall be responsible for and make good to Railtrack all reasonable costs, charges, damages and expenses not otherwise provided for in this article which may be occasioned to or reasonably incurred by Railtrack—

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

and the undertaker shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by Railtrack on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Railtrack or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph:—

Provided that Railtrack shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

(19) In the assessment of compensation payable under this article there shall not be taken into account any enhancement of that compensation attributable to any action taken by or any agreement entered into by Railtrack if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining compensation or increased compensation and for the avoidance of doubt any reference in this paragraph to compensation shall be deemed to relate to any payment due to Railtrack under this article.

(20) Section 42 (For further protection of British Railways Board) of the Greater Manchester (Light Rapid Transit System) Act 1988(1) shall have effect with the substitution of references to Railtrack for references to the railways board and as if the references therein to the light rapid transit system and to works authorised by that Act included references to

the authorised works and to any parts of the railways of Railtrack transferred to, and vested in, the undertaker by agreement with Railtrack under this Order.

(21) The undertaker and Railtrack may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the land 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 Railtrack relating to any land, works or property referred to in this paragraph.”

For protection of Environment Agency

51. For the protection of the Environment Agency (in this article referred to as “the Agency”) the following provisions shall, unless otherwise agreed in writing between the undertaker and the Agency, have effect:—

“(1) Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991⁽²⁾ or any byelaws made under that Act or the Land Drainage Act 1991⁽³⁾ in relation to anything done under or in pursuance of this Order.

- (a) (2) Before carrying out any works under the powers of this Order involving the erection or raising of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991 or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow of any such watercourse in, under or through any land held for the purposes of or in connection with the authorised transit system the undertaker shall furnish to the Agency proper and sufficient plans thereof for the approval of the Agency and shall not carry out the said works until the said plans have been approved in writing by the Agency.
- (b) The approval of plans furnished under this paragraph shall not be unreasonably withheld and if, within two months of such plans being supplied to the Agency, the Agency does not indicate in writing its disapproval and the grounds of its disapproval, it shall be deemed to have approved the plans as supplied.
- (c) For the purposes of this paragraph, “plans” includes sections, drawings, specifications, calculations and descriptions.

- (a) (3) Any culvert or any structure designed to contain or divert the flow of any watercourse situated within any land held for purposes of or in connection with the authorised transit system, whether constructed under the powers of this Order or in existence prior to the making hereof, shall be maintained by the undertaker in good repair and condition and free from obstruction.

- (b) Nothing in this paragraph shall have the effect of requiring the undertaker to carry out works of maintenance in respect of any culvert or structure which the Agency or any other person are liable to maintain.

(4) If any obstruction is erected or raised or any culvert is constructed, altered or replaced in contravention of this article the undertaker shall upon receiving notice from the Agency take such action as may be necessary to remedy the effect of the contravention to the Agency’s satisfaction and in default the Agency may itself take such action as may be

(2) 1991 c. 57.

(3) 1991 c. 59.

necessary and recover the expenses reasonably incurred by it in doing so from the undertaker as a debt due from them to the Agency.”

Minerals

52. Nothing in this Order shall affect the right of any person entitled to any mine or minerals of any description whatsoever under a street along which any authorised street tramway is laid to work the mine or get the minerals; but this shall not affect any liability (whether civil or criminal) of the person so entitled in respect of damage to the authorised street tramway resulting from the exercise of any such right.

Saving for highway authorities

53. Nothing in this Order shall affect any power of a highway authority to widen, alter, divert or improve any highway along which a street tramway is laid.

Arrangements with highways authorities

54. The following provisions shall, unless otherwise agreed in writing between the undertaker and the highway authority concerned, have effect:—

“(1) In this article “highway” means a street vested in or maintainable by the highway authority;

“highways operations” means the construction of any part of the authorised works which will involve interference with a highway or the traffic in a highway and any temporary stopping up, alteration or diversion of a highway;

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

(2) Wherever in this article provision is made with respect to the approval or consent of the highway authority, that approval or consent shall be in writing and may be given subject to such reasonable terms and conditions as the highway authority may require in the interests of safety and in order to minimise inconvenience to persons using the highway, but shall not be unreasonably withheld.

(3) Prior to seeking approval under paragraph (4) below, the undertaker shall consult the highway authority concerned as to any works and changes in the management of the highway network which may be required to ensure the effective integration of the authorised transit system with other forms of highway traffic and, within 28 days of being requested in writing by the undertaker so to do, the highway authority shall provide the undertaker with its opinion on the subject.

- (a) (4) Without prejudice to the application of sections 59 and 60 of the 1991 Act (duty of street authority to co-ordinate and undertakers to co-operate) before commencing any highway operations, the undertaker shall submit to the highway authority for its approval proper and sufficient plans and shall not commence the highway operations until such plans have been approved or settled by arbitration.
- (b) If, within 56 days after any plans have been submitted to a highway authority under sub-paragraph (a) above, it has not intimated its disapproval and the grounds of disapproval, it shall be deemed to have approved them.
- (c) In the event of any disapproval of plans by a highway authority under this paragraph, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it shall be deemed to have approved them.

- (5) In submitting plans under paragraph (4) above, the undertaker shall—
- (a) ensure that the design of any lighting for new station areas is such as not to cause confusion to highway users operating under normal highway lighting;
 - (b) ensure that the design and positioning of any poles and brackets required for overhead line equipment and the design of foundations, platforms, road islands, substations, electric lines and other apparatus are compatible, so far as reasonably practicable, with street furniture vested in the highway authority; and
 - (c) ensure that the design of any traffic signalling system for the authorised transit system is fully compatible with traffic signalling for other traffic users whilst achieving priority signalling for tramcars using the authorised transit system wherever practicable.

(6) Except in an emergency or where reasonably necessary to secure the safety of the public no direction or instruction shall be given by the highway authority to the contractors, servants or agents of the undertaker regarding the highway operations without the prior consent in writing of the undertaker:—

Provided that the highway authority shall not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions pursuant to this article.

(7) To facilitate liaison with the undertaker, the highway authority concerned shall provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker respecting highway operations.

(8) So much of the authorised works as forms part of or is intended to become public highway, or part of any such highway, and which are not street works as respects which the provisions of Part III of the 1991 Act apply shall be completed in accordance with the reasonable requirements of the local highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration.

(9) The undertaker shall not, except with the consent of the highway authority, alter or interfere with any sanitary convenience, refuge, sewer, drain, lamp column, traffic sign, bollard, bin for refuse or road materials or apparatus connected therewith, or any other property or work belonging to, or under the jurisdiction or control of, the highway authority on or under any highway or repairable by them or the access thereto.

(10) The undertaker shall not, except with the consent of the highway authority, deposit any soil or materials or stand any vehicle or plant on or over any highway so as to obstruct or render less safe the use of the highway by any person or, except with the like consent, deposit any soil or materials on any highway except within a hoarding.

(11) The undertaker shall, if reasonably so required by the highway authority, provide and maintain during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the authorised works, temporary ramps for vehicular traffic or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with the standard recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs Regulations and General Directions 1994(4) in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

(12) The undertaker shall not place any hoardings on any part of any highway except for such period and in such manner as may be reasonably necessary.

(13) The undertaker shall indemnify the highway authority against any claim which may arise as a result of any subsidence of, or damage to, any highway or any sanitary convenience, refuge, sewer, drain, lamp column, traffic sign, bollard, bin for refuse or road materials or apparatus connected therewith or any other property or work belonging to, or under the jurisdiction or control of, the highway authority on or under any highway, or maintainable by them, which may be caused by, or in consequence of, any act or default of the undertaker, its contractors, servants or agents.

(14) Unless otherwise agreed between the parties any difference arising between the undertaker and the highway authority under this article (other than a difference as to its meaning or construction) shall be determined by arbitration.”