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STATUTORY INSTRUMENTS

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**2005 No. 1794**

**The Midland Metro (Birmingham City  
Centre Extension, etc.) Order 2005**

**PART 2**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct and maintain works**

6.—(1) The Executive may construct and maintain the scheduled works.

(2) Subject to article 7, the scheduled works shall be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the deposited sections.

(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, in connection with or in consequence of, the construction of the scheduled works namely—

- (a) stations, platforms, junctions and stopping places;
- (b) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised tramway;
- (c) works for the strengthening, alteration or demolition of any building or structure;
- (d) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (e) works to alter the position of any apparatus or street furniture, including mains, sewers, drains, cables and lights;
- (f) landscaping, environmental and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
- (g) 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, in connection with, or in consequence of, the construction of the scheduled works.

(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) shall 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 2 to this Order for the purpose specified in relation to that land in column (2) of that Part 1 or 2.

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

**Power to deviate, etc.**

7.—(1) In constructing or maintaining any scheduled work, the Executive may—

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation for that work shown on those plans; and
- (b) subject to article 9(4)(b) and (c), deviate vertically from the levels shown on the deposited sections—
  - (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 any of the authorised street tramways lay down—

- (a) double lines of rails in lieu of single lines;
- (b) single lines of rails in lieu of double lines;
- (c) interlacing lines of rails in lieu of double or single lines; or
- (d) double or single lines of rails in lieu of interlacing lines.

(3) The power in paragraph (2) shall not be exercised in the case of any authorised street tramway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(4) The Executive may in constructing and maintaining any of the authorised tramroads provide within the limits of deviation for those tramroads such number of lines of rails and sidings as may be necessary or expedient.

(5) If the highway authority carries out a remodelling or reconstruction of Five Ways roundabout in the City, the Executive may with the consent of the highway authority (such consent not to be unreasonably withheld) construct or reconstruct Work No. 2 at a level higher than that permitted by paragraph (1)(b)(i) in order to accommodate that remodelling or reconstruction.

(6) Any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not have effect as deeming planning permission to be granted for any works to which a consent under paragraph (5) applies.

**Designation of works**

8.—(1) Notwithstanding anything in the description of scheduled works contained in Schedule 1 to this Order—

- (a) the whole or any part of an authorised street tramway may be constructed within the limits of deviation for that work off-street as a tramroad, and so far as it is so constructed shall be treated for the purposes of this Order as if it were so designated; and
- (b) the whole or any part of any authorised tramroad may be constructed within the limits of deviation for that work along a street as a street tramway, and so far as it is so constructed shall be treated for the purposes of this Order as if it were so designated.

(2) Where, by means of the creation or extinction of rights of way, any part of the authorised tramway which has been constructed as a tramroad becomes a street tramway or any part which was constructed as a street tramway becomes a tramroad, it shall be treated for the purposes of this Order as if it were so designated.

## Streets

### Power to alter layout, etc. of streets

9.—(1) The Executive may alter the layout of, and carry out other ancillary works in, any street in the City specified in column (1) of Schedule 3 to this Order in the manner specified in relation to that street in column (2) of that Schedule.

(2) The Executive may remove the kerbs separating the footway from the carriageway in any part of Bull Street, Corporation Street, Stephenson Place, Stephenson Street or Pinfold Street in the City along or adjacent to which any part of the authorised tramway is or is to be constructed.

(3) Without prejudice to the powers conferred by article 6 or paragraphs (1) and (2) but subject to paragraph (4)(a), the Executive may for the purpose of constructing, maintaining or using any authorised street 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 prejudice to the generality of the foregoing, 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 works to the carriageway of the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the tramway;
  - (f) make and maintain crossovers, sidings or passing places; and
  - (g) carry out works for the provision or alteration of parking places.
- (4) The following shall require the consent of the street authority—
- (a) the exercise of the powers conferred by paragraph (3);
  - (b) the exercise of the power to deviate conferred by article 7(1)(b) with respect to the construction or maintenance of a scheduled work comprising a street 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 a scheduled work comprising the alteration of the level or alignment of a highway; or
  - (d) the exercise of the power conferred by article 10 with respect to the placing in the street of supports for overhead line equipment for any authorised street tramway.
- (5) Consent under paragraph (4) shall not be unreasonably withheld.

### Power to keep apparatus in streets

10.—(1) The Executive may, subject to article 9(4)(d), for the purposes of or in connection with the construction, maintenance and use of any authorised street 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 prejudice to the generality of the foregoing, 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 III of the 1991 Act;

- (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989(1); 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**

**11.** The Executive may, for the purpose of exercising the powers conferred by article 10 and the other provisions of this Order, enter upon any street in which any authorised street 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 prejudice to the generality of the foregoing, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

### **Permanent stopping up of means of access**

**12.—**(1) The Executive may stop up and discontinue the following—

- (a) at point E25, the private means of vehicular access to Edgbaston Shopping Centre car park, and
- (b) between points E26 and E27, the private means of vehicular access to the premises at 54 Hagley Road;

and it may carry out any incidental operations within the Order limits for those purposes.

(2) Any person who suffers loss by a stopping up authorised by paragraph (1) shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

### **Temporary stopping up of streets**

**13.—**(1) The Executive may, during and for the purposes of the execution of the authorised 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 shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

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

### **Access to works**

**14.—**(1) The Executive may, for the purposes of the construction or operation of the scheduled works, form and lay out means of access, or improve existing means of access—

- (a) at the points shown on the works plans; or
- (b) in such location or locations within the Order limits as may be approved by the highway authority.

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

### **Construction and maintenance of new or altered highways**

**15.**—(1) Any highway to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed by the highway authority and the Executive, be maintained by and at the expense of the Executive for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a highway is altered or diverted under this Order, the altered or diverted part of the highway shall when completed to the reasonable satisfaction of the highway authority, unless otherwise agreed, be maintained by and at the expense of the Executive for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge carrying a highway over a tramroad of the Executive or carrying a tramroad of the Executive over a highway.

(4) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Executive shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

(5) Nothing in paragraphs (1) to (4) shall have effect in relation to street works as respects which the provisions of Part III of the 1991 Act apply.

(6) In any action against the Executive in respect of damage resulting from any failure by it to maintain a highway under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the Executive had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous to traffic.

(7) For the purposes of a defence under paragraph (6), the court shall in particular have regard to the following matters—

- (a) the character of the highway, including its use for a railway or tramway, and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a highway of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the highway;
- (d) whether the Executive knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway;
- (e) where the Executive could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed;

but for the purposes of such a defence it is not relevant to prove that the Executive had arranged for a competent person to carry out or supervise the maintenance of the part of the highway to which the action relates unless it is also proved that the Executive had given him proper instructions with regard to the maintenance of the street and that he had carried out those instructions.

### **Construction and alteration of bridges**

**16.** Any bridge to be constructed or altered under this Order for carrying a highway over any authorised tramway or any authorised tramway over a highway shall be constructed or altered in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

### **Restoration of streets if street tramway discontinued**

17. If the Executive permanently ceases to operate any of the authorised street tramways (“the discontinued tramway”), it shall 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**

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

- (a) the construction of any new street (including any structure carrying the street over or under any authorised tramway) under the powers conferred by this Order;
  - (b) the maintenance of the structure of any bridge carrying a highway over any authorised tramway or carrying any authorised tramway over a highway;
  - (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
  - (d) the execution in the street of any of the works referred to in article 11.
- (2) Such an agreement may, without prejudice to the generality 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**

19.—(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 authorised 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) The Executive shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The Executive shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) The Executive shall 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.

(5) The Executive shall 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 or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(2).

(7) 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;
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

### **Attachment of equipment to buildings for purposes of tramway**

**20.**—(1) Subject to the following provisions of this article, the Executive may affix to any building listed in Part 2 of the book of reference any brackets, cables, wires, insulators and other apparatus required in connection with the authorised tramway.

(2) The Executive shall not under this article affix any apparatus to a building without the consent of the relevant owner of the building; and such consent may be given subject to reasonable conditions (including, where appropriate, the payment of rent) but shall not be unreasonably withheld.

(3) Where—

- (a) the Executive serves on the relevant owner of a building a notice requesting the owner’s consent to the affixing of specified apparatus to the building; and
- (b) the relevant owner does not within the period of 56 days beginning with the date upon which the notice is served give his consent unconditionally or give it subject to conditions or refuse it,

the consent shall be deemed to have been withheld.

(4) Where, in the opinion of the Executive, a consent required under this article for the affixing of specified apparatus is unreasonably withheld or given subject to unreasonable conditions, it may apply to the magistrates' court, who may either allow the apparatus to be affixed subject to such conditions, if any, as it thinks fit or may disallow the application.

(5) Where apparatus is affixed to a building under this article—

- (a) any owner for the time being of the building may serve on the Executive not less than 28 days' notice requiring the Executive at its own expense temporarily to remove the apparatus during any demolition, reconstruction or repair of the building if such removal is reasonably necessary for that purpose; and
- (b) the Executive shall have the right as against any person having an interest in the building to maintain the apparatus.

(6) The Executive shall pay compensation to the owners and occupiers of the building for any loss or damage sustained by them by reason of the exercise of the powers conferred by paragraphs (1) and (5)(b); and any dispute as to a person’s entitlement to compensation, or as to the amount of compensation, shall be determined under Part I of the 1961 Act.

(7) In the case of a building fronting Pinfold Street, Stephenson Street or Stephenson Place in the City, the reference to 28 days referred to in paragraph (5)(a) shall be treated as a reference to 56 days.

(8) In this article—

“building” includes any structure and a bridge or aqueduct over the street; and

“relevant owner”—

- (a) in relation to a building occupied under a lease or tenancy having an unexpired term exceeding 5 years, means the occupier of the building; or
- (b) in relation to any other building, means the person for the time being receiving the rack rent of the building whether on his own account or as agent or trustee for any other person, or who would so receive it if the building were let at a rack rent.

### **Safeguarding works to buildings**

21.—(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 authorised works; or
- (b) after the completion of the construction of that part of the authorised works, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised 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 enter and survey any building falling within paragraph (1) and any land belonging to it.

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

- (a) enter the building and any land belonging to it; 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;
- (b) a right under paragraph (3) to enter a building and any land belonging to it;
- (c) a right under paragraph (4)(a) to enter a building or land; or
- (d) a right under paragraph (4)(b) to enter land,

the Executive shall, 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 53.

(7) The Executive shall compensate the owners and occupiers of any building or land in relation to which the powers of 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 shall compensate the owners and occupiers of the building for any damage sustained by them.

(9) Nothing in this article shall relieve the Executive from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part I of the 1961 Act.

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

(12) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection,
- (b) “safeguarding works”, in relation to a building means—
  - (i) 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
  - (ii) 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**

**22.**—(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 an authorised street tramway is constructed—

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

(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 9(3), 10 and 11 and of article 40 shall apply in relation to temporary tramways laid under this article as they apply in relation to authorised street tramways.

### **Power to survey and investigate land**

**23.**—(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 prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality 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 authorised 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) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
  - (b) may take with him such vehicles and equipment as are necessary for the purpose of exercising any of the powers conferred by paragraph (1).
- (4) No trial hole shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.
- (5) The Executive shall make 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 I of the 1961 Act.

**Mode of construction and operation of tramway**

- 24.—**(1) The authorised tramway shall 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 shall be constructed on 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 shall 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 shall 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.