

SCHEDULE 2
MODEL CLAUSES FOR TRAMWAYS
MODEL CLAUSES

“PART 1
PRELIMINARY

Interpretation

1.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961⁽¹⁾;
- “the 1965 Act” means the Compulsory Purchase Act 1965⁽²⁾;
- “the 1984 Act” means the Road Traffic Regulation Act 1984⁽³⁾;
- “the 1990 Act” means the Town and Country Planning Act 1990⁽⁴⁾;
- “the 1991 Act” means the New Roads and Street Works Act 1991⁽⁵⁾;
- “address” includes any number or address used for the purposes of electronic transmission;
- “authorised street tramway” means any street tramway authorised by this Order;
- “authorised tramroad” means any tramroad authorised by this Order;
- “authorised tramway” means the tramway (consisting of the authorised street tramway and the authorised tramroad) authorised by this Order;
- “authorised works” means the scheduled works and any other works authorised by this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “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;
- “carriageway” has the same meaning as in the Highways Act 1980⁽⁶⁾;
- “cycle track” has the same meaning as in the Highways Act 1980;
- “electric line” has the meaning given in section 64(1) of the Electricity Act 1989⁽⁷⁾;
- “electronic transmission” means a communication transmitted—
 - (a) by means of an electronic communications network; or
 - (b) by other means but while in electronic form;
- “footway” has the same meaning as in the Highways Act 1980;
- “highway” and “highway authority” have the same meaning as in the Highways Act 1980;

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1984 c. 27.
(4) 1990 c. 8.
(5) 1991 c. 22.
(6) 1980 c. 66.
(7) 1989 c. 29.

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“the land plan” means the plan prepared in pursuance of rule 12(5) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006⁽⁸⁾ and certified by the Secretary of State as the land plan for the purposes of this Order;

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

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

“the Order limits” means any limits of deviation and any additional limits of land to be acquired or used which are shown on the land plan or the works plan;

“owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981⁽⁹⁾;

“the scheduled works” means the works specified in Schedule 1 to this Order or any part of them;

“the sections” means the sections prepared in pursuance of rule 12(3) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and certified by the Secretary of State as the sections for the purposes of this Order;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 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;

“tramroad” means any part of a tramway which is not a street 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 Tribunal;

“the undertaker” means [];

“vehicle” includes mobile traction unit;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plan” means the plan prepared in pursuance of rule 12(1)(a) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and 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 above its surface.

(3) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, direction and length, and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

⁽⁸⁾ S.I.2006/1466.

⁽⁹⁾ 1981 c. 67.

Application of enactments relating to railways

2.—(1) The following provisions of the Railways Clauses Consolidation Act 1845⁽¹⁰⁾ shall be incorporated into this Order but shall apply only in relation to the authorised tramroad—

section 46 (crossing of roads—level crossings), subject to paragraph (3);

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 75 (omission to fasten gates);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923⁽¹¹⁾; and

section 145 (recovery of penalties).

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

“the company” means the undertaker;

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

“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 tramroad and, except where the context otherwise requires, any authorised works ancillary to the authorised tramroad;

“the special Act” means this Order;

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

(3) In section 46 of the Act of 1845, as incorporated in this Order, for the proviso there shall be substituted the words “Provided always that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level.”.

(4) The provisions of the Regulation of Railways Acts 1840 to 1893⁽¹²⁾ shall not apply in relation to the authorised tramway.

(5) The provisions of the Highway (Railway Crossings) Act 1839⁽¹³⁾ shall not apply in relation to the authorised tramway.

⁽¹⁰⁾ 1845 c. 20.

⁽¹¹⁾ 1923 c. 20.

⁽¹²⁾ 1868 c. 119 and 1873 c. 48.

⁽¹³⁾ 1839 c. 45.

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(6) Sections 32 to 34 of the Offences Against the Person Act 1861(14) shall apply in relation to the authorised tramway as if the word “tramway” were substituted for “railway” throughout those sections.

Application of the 1991 Act

3.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part 3 of the 1991 Act (street works) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); 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 of the Highways Act 1980 (dual carriageways and roundabouts).

(2) The provisions of the 1991 Act mentioned in paragraph (3) which, together with other provisions of that Act, apply in relation to the execution of street works and any regulations made or code of practice issued or approved under those provisions shall apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 10 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- section 54 (advance notice of certain works), subject to paragraph (4);
- section 55 (notice of starting date of works), subject to paragraph (4);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- 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.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) shall 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.

(5) Nothing in article 12 (construction and maintenance of new or altered streets) shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker shall not by reason of any duty under that article to maintain a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) have effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

4.—(1) The undertaker may construct and maintain the scheduled works.

(2) Subject to article 5 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works plan and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5), the undertaker 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 scheduled works, namely—

- (a) stations, platforms and tram stops;
- (b) works required for, or in connection with, the control of vehicular and pedestrian traffic on the authorised tramway;
- (c) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (d) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (e) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (f) works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (5), the undertaker 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 scheduled works, other than works that would interfere with a navigable watercourse.

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

- (a) within the limits of deviation;
- (b) within the boundaries of any street along which the construction of a street tramway is shown on the works plan or which has a junction with such a street; and
- (c) on land specified in columns (1) and (2) of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Schedule.

Power to deviate

5.—(1) In constructing or maintaining any of the scheduled works, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plan within the limits of deviation for that work; and
- (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent not exceeding [3] metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

(2) In constructing any work shown on the works plan as situated in a street and for which no limits of deviation are shown on that plan the undertaker may deviate laterally within the boundaries of that street.

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(3) The undertaker may, in constructing or maintaining any of 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.

(4) The power in paragraph (3) 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.

Streets

Power to alter the layout of streets

6.—(1) The undertaker may alter the layout of any street specified in columns (1) and (2) of Schedule 3 to this Order in the manner specified in relation to that street in column (3) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may, for the purpose of constructing, maintaining or using any authorised street tramway, alter the layout of any street along which the tramway is laid and the layout of any street having a junction with such a street; and, without prejudice to the generality of the foregoing, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, cycle track or verge within the street;
- (b) alter the level of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street forming a reserved area in the street as a stopping place for tramcars or by carrying out other works for that purpose;
- (d) 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; and
- (e) make and maintain crossovers, sidings or passing places.

(3) The powers in paragraph (2) shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

Power to keep apparatus in streets

7.—(1) The undertaker may, for the purposes of or in connection with the construction, maintenance and use of any authorised street tramway, place and maintain in any street along which the tramway is laid or which has a junction with such a street any work, equipment or apparatus including, 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 3 of the 1991 Act; and
- (b) the reference to any work, equipment or apparatus in a street includes a reference to any work, equipment or apparatus under, over or upon the street.

Power to execute street works

8.—(1) The undertaker may, for the purpose of exercising the powers conferred by article 7 (power to keep apparatus in streets) and the other provisions of this Order, enter upon any street along which any authorised street tramway is laid or has 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.

(2) This article is subject to paragraph 3 of Schedule 12 (provisions relating to statutory undertakers etc.) to this Order.

Stopping up of streets

9.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 to this Order to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 to this Order (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and thereafter maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 4 to this Order (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) the undertaker may appropriate and use for the purposes of its tramway undertaking so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article is subject to paragraph 2 of Schedule 12 (provisions relating to statutory undertakers etc.) to this Order.

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Temporary stopping up of streets

10.—(1) The undertaker, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street 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 undertaker shall 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) Without prejudice to the generality of paragraph (1), the undertaker may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 5 to this Order to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.

(4) The undertaker shall not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent shall not be unreasonably withheld.

(5) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

11. The undertaker may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 6 (access to works) to this Order; and
- (b) with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such other means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised works.

Construction and maintenance of new or altered streets

12.—(1) Any street (other than [*specified private streets*]) to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall be maintained by and at the expense of the undertaker 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 street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

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

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove

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that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court shall in particular have regard to the following matters—

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

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

NOTE: Where a private street is to be constructed it should be excepted from paragraph (1) and the article should specify the person by whom the street is to be maintained at the expiry of the 12 month period.

Construction of bridges and tunnels

13. Any bridge or tunnel to be constructed under this Order for carrying a highway over or under a tramroad shall be constructed in accordance with the plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

Agreements with street authorities

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

- (a) the construction of any new street (including any structure carrying the street over or under a tramroad) under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a tramroad;
- (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 8(1) (power to execute street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision 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.

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Restoration of streets if tramway discontinued

15. If the undertaker abandons the construction of or permanently ceases to operate any of the authorised street tramway, it shall as soon as reasonably practicable and unless otherwise agreed with the street authority—

- (a) remove from the street in which the 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 tramway was laid, or redundant works, equipment and apparatus were laid, regard being had to—
 - (i) the condition of the street before the tramway was laid; and
 - (ii) the nature of the traffic using the street at the time of the discontinuance.

Level crossings

16.—(1) The undertaker may construct the authorised tramway so as to carry it on the level across the highways specified in Schedule 7 to this Order.

(2) Without prejudice to the generality of article 6 (power to alter the layout of streets) the undertaker may in the exercise of the powers conferred by this article alter the level of any highway specified in Schedule 7 to this Order.

(3) The highway authority and the undertaker may enter into agreements with respect to the construction and maintenance of any new level crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(4) In this article, “new level crossing” means the place at which the authorised tramroad crosses a highway on the level under the powers conferred by this article.

Supplemental powers

Attachment of equipment to buildings for the purposes of tramway

17.—(1) Subject to the following provisions of this article, the undertaker may affix to any building—

- (a) any brackets, cables, wires, insulators and other apparatus required in connection with the authorised tramway; and
- (b) any lamps, brackets, pipes, electric lines and other apparatus required for the provision of additional or substitute street lighting in consequence of the construction of the authorised tramway.

(2) The undertaker shall not under the powers conferred by this article affix any apparatus to a building without the consent of the relevant owner of the building, which consent may be given subject to reasonable conditions (including, where appropriate, the payment of rents) but shall not be unreasonably withheld.

(3) Where—

- (a) the undertaker serves on the relevant owner of a building a notice requesting the relevant 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 undertaker, 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 which may either allow the apparatus to be affixed subject to such conditions, if any, as it thinks fit or it may disallow the application.

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

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

(6) Where, in the opinion of the undertaker, a requirement temporarily to remove any apparatus affixed to a building under this article during any reconstruction, demolition or repair of the building is not reasonably necessary for that purpose, the undertaker may refer the matter to an arbitrator under article 58 (arbitration), who may allow the apparatus to be temporarily removed or may order that it shall not be temporarily removed.

(7) The undertaker 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 the compensation shall be determined under Part 1 of the 1961 Act.

(8) In this article "relevant owner"—

- (a) in relation to a building any part of which is occupied under a lease or tenancy having an unexpired term exceeding 5 years, means the occupier of that part of the building; and
- (b) in relation to any 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.

Discharge of water

18.—(1) The undertaker 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 lay down, take up and alter pipes and may, on any land within the Order limits, or in any street along which the authorised street tramway is laid, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the exercise of the power under paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(15).

(3) The undertaker shall 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 he may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(15) 1991 c. 56.

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(5) The undertaker shall not, in the 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 undertaker 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, oil or matter in suspension.

(7) 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⁽¹⁶⁾.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Commission for the New Towns, the Environment Agency, a harbour authority within the meaning of the Harbours Act 1964⁽¹⁷⁾, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective works to buildings

19.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers to be necessary or expedient.

(2) Protective 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 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 authorised works is first opened for use.

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

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

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

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and 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,

⁽¹⁶⁾ 1991 c. 57.

⁽¹⁷⁾ 1964 c. 40.

the undertaker 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 protective works proposed to be carried out.

(6) Where a 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 protective works or to enter the building or land to be referred to arbitration under article 58 (arbitration).

(7) The undertaker shall 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) protective 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 in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the authorised works,

the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without prejudice to article 57 (no double recovery) nothing in this article shall relieve the undertaker 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 1 of the 1961 Act.

(11) In this article “protective 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 tramway

20.—(1) The undertaker may, if it considers it necessary or expedient in consequence of 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 or near to that street a temporary tramway in place of the authorised street tramway.

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

(3) The provisions of article 40 (traffic control) shall apply in relation to any temporary street tramway laid under this article as they apply in relation to the authorised street tramway.

Power to survey and investigate land

21.—(1) The undertaker may for the purposes of this Order—

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- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (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 ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and the making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(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 undertaker—

- (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 to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(18).

Mode of construction and operation of tramway

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

(2) The authorised tramway shall 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 making a payment) the undertaker 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 undertaker 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.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

23.—(1) The undertaker may acquire compulsorily—

- (a) so much of the land shown on the land plan within the limits of deviation as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order (being land shown on the land plan and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes that are ancillary to its tramway undertaking.

(2) This article is subject to article 28 (power to acquire land limited to subsoil lying more than 9 metres beneath surface) and article 30 (temporary use of land for construction of works).

Application of Part 1 of the Compulsory Purchase Act 1965

24.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽¹⁹⁾ 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, shall have 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 the Compulsory Purchase (Vesting Declarations) Act 1981

25.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽²⁰⁾ shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied by paragraph (1), shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall 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.”.

⁽¹⁹⁾ 1981 c. 67.

⁽²⁰⁾ 1981 c. 66.

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(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

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

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) he 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” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 23 (power to acquire land).

Power to acquire new rights

26.—(1) The undertaker may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 23 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 8 to this Order) where the undertaker acquires a right over land under paragraph (1) the undertaker shall not be required to acquire a greater interest in that land.

(3) Schedule 8 to this Order shall have 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 article of a right over land by the creation of a new right.

Power to acquire subsoil only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1)(a) or (b) of article 23 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of or rights in the subsoil of land under paragraph (1) it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 34 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Power to acquire land limited to subsoil lying more than 9 metres beneath surface

28.—(1) This article applies to the land specified in Schedule 9 to this Order.

(2) In the case of land to which this article applies, the undertaker’s powers of compulsory acquisition under article 23 (power to acquire land) shall be limited to the acquisition of, or rights in, so much of the subsoil of the land as may be required for the purposes of the authorised works.

(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, it shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—

- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;
- (b) in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or
- (c) in any other case, ground surface level.

Rights under or over streets

29.—(1) The undertaker 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 authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its tramway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the undertaker 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 undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

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

(5) Compensation shall not be payable under paragraph (3) to any person who is an undertaker, to whom section 85 of the 1991 Act applies, in respect 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

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

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 10 to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

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(2) Not less than 14 days before entering upon and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 10 to this Order.

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

(5) The undertaker shall 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, shall be determined under Part 1 of the 1961 Act.

(7) Without prejudice to article 57 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) 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 shall not apply in relation to the land referred to in paragraph (1) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 26 (power to acquire new rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 27 (power to acquire subsoil only) or in accordance with article 28 (power to acquire land limited to subsoil lying more than 9 metres beneath surface).

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

(10) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Temporary use of land for maintenance of works

31.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; 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) shall not authorise the undertaker to take temporary possession of—

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

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

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of 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 undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall 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, shall be determined under Part 1 of the 1961 Act.

(8) Without prejudice to article 57 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) 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 undertaker takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(11) In this article "the maintenance period", in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for use.

Compensation

Disregard of certain interests and improvements

32.—(1) In assessing the compensation payable to any person on the acquisition from him of any land under this Order, the tribunal shall 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.

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

Set-off for enhancement in value of retained land

33.—(1) In assessing the compensation payable to any person in respect of the acquisition from him under this Order of any land (including the subsoil) the tribunal shall set off against the value of the land so acquired any increase in value of any contiguous or adjacent land

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belonging to that person in the same capacity which will accrue to him by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from him of any new rights over land (including the subsoil) under article 26 (power to acquire new rights), the tribunal shall set-off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to him by reason of the construction of the authorised works.

(3) The 1961 Act shall have effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Acquisition of part of certain properties

34.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 24 (application of Part 1 of the Compulsory Purchase Act 1965)) 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 only part of a house, building or manufactory or 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 undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he 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 shall be required to 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 shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine 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) in the case of part of the 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 shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine 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) in the case of 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 shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine 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 shall be 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 undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determine 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 shall be 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 undertaker 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 undertaker 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 shall pay the owner compensation for any loss or expense occasioned to him 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 only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

35.—(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act, whichever is the sooner.

(2) All private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plans is required for the purposes of this Order, shall be extinguished at the appropriation of the land for any of those purposes by the undertaker.

(3) All private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 12 (provisions relating to statutory undertakers etc.) to this Order applies.

Time limit for exercise of powers of acquisition

36.—(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 shall be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 24 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 30 (temporary use of land for construction of works) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker 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

37.—(1) The undertaker may operate and use the authorised tramway and other authorised 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 article 50 (power to transfer undertaking), the undertaker shall, for the purpose of operating the tramway, have 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 undertaker or other reasonable excuse, uses the apparatus mentioned in paragraph (2) shall be 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 shall restrict the exercise of any public right of way over any part of a street in which the apparatus is situated in pursuance of paragraph (2) except to the extent that the exercise of the right is constrained by the presence of the apparatus.

Power to charge fares

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

Obstruction of the tramway and interference with the tramway

39.—(1) If any obstruction is caused to tramcars using the authorised tramway by a vehicle waiting, loading, unloading or breaking down on any part of the tramway, the person in charge of the vehicle shall forthwith remove it; and if he fails to do so the undertaker may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the vehicle was put or left so as to become an obstruction to tramcars; or
- (b) any person who was the owner of the vehicle at that time unless he shows that he was not, at that time, concerned in or aware of the vehicle being so put or left.

(2) If any obstruction is caused to tramcars using the authorised tramway by a load falling on the tramway from a vehicle, the person in charge of the vehicle shall forthwith remove the load from the tramway; and if he fails to do so, the undertaker may take all reasonable steps to remove the load and may recover the expenses reasonably incurred in doing so from—

- (a) any person who was in charge of the vehicle at the time when the load fell from it; or
- (b) any person who was the owner of the vehicle at that time unless he shows that he was not, at that time, concerned in or aware of the vehicle being in the place at which the load fell from it.

(3) For the purposes of paragraphs (1) and (2) the owner of a vehicle shall be taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of a vehicle at any time, it shall be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was registered under the Vehicle Excise and Registration Act 1994⁽²¹⁾.

- (4) A person who, wilfully and without lawful excuse—
 - (a) interferes with or removes the tramway or any part of the tramway or the works connected therewith;
 - (b) places or throws materials or objects of any kind on any part of the tramway; or
 - (c) does anything which obstructs any tramcar or other vehicle using the tramway, whether or not such obstruction endangers the lives of any person in such tramcar or other vehicle;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Traffic control

40.—(1) The undertaker may, for the purposes of, or in connection with the operation of, the authorised street tramway, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State on or near any street in which the authorised street tramway is laid or gives access to such a street.

- (2) The undertaker—
 - (a) shall consult with the traffic authority as to the placing of signs; and
 - (b) unless the traffic authority are unwilling to do so and subject to any directions given under section 65 of the 1984 Act, shall enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(21) 1994 c. 22.

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(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 shall include a power to give directions to the undertaker as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) shall be exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on or near any street along which the authorised street tramway is laid shall consult with the undertaker as to the placing of any traffic sign which would affect the operation of the authorised street tramway.

(5) Tramcars shall be taken to be public service vehicles for the purposes of section 122(2)(c) of the 1984 Act.

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

Traffic Regulation

41.—(1) Subject to the provisions of this article, the undertaker may, for the purposes of the authorised tramway, at any time prior to the expiry of 12 months from the opening of the authorised tramway for use, and with the consent of the traffic authority in whose area the road is situated, which consent shall not be unreasonably withheld—

- (a) prohibit or restrict the waiting or loading or unloading of vehicles in the manner specified in Part 1 of Schedule 11 to this Order on those roads specified in column (2) and along the lengths and between the points specified in column (3) of that Part of that Schedule;
- (b) authorise the use as a parking place in the manner specified in Part 2 of Schedule 11 to this Order of those roads specified in column (2) and along the lengths and between the points specified in column (3) of that Part of that Schedule;
- (c) make provision as to the direction of vehicular traffic in the manner specified in Part 3 of Schedule 11 to this Order on the roads specified in column (2) and as respects direction to the extent specified in column (3) of that Part of that Schedule;
- (d) prohibit vehicular access in the manner specified in Part 4 of Schedule 11 to this Order on those roads specified in column (3) of that Part of that Schedule;
- (e) revoke any traffic regulation order under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.

(2) The undertaker shall consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (3).

(3) The undertaker shall not exercise the powers conferred by this article unless it has—

- (a) given not less than 12 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated;
- (b) advertised its intention in such manner as the traffic authority may, within 28 days of its receipt of notice of the undertaker's intention, specify in writing.

(4) Any prohibition, restriction or other provision made by the undertaker under subparagraph (1)(a), (c), (d), or (e) shall have effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify savings (in addition to those mentioned in Schedule 11) to which the prohibition, restriction or other provision is subject.

(5) Any authorisation of a parking place made by the undertaker under sub-paragraph (1) (b) shall have effect as if duly made by the local authority as an order under section 32 of the 1984 Act.

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

Power to lop trees overhanging tramway

42.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised tramway, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the tramway or any apparatus used for the purposes of the tramway; or
- (b) from constituting a danger to passengers or other persons using the tramway.

(2) In exercising the powers under paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Obstruction of construction of authorised works

43. Any person who, without reasonable excuse—

- (a) obstructs another person acting under the authority of the undertaker in setting out the lines of the scheduled works, or in constructing any of the authorised works; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Trespass on tramroad

44.—(1) Any person who—

- (a) trespasses on any authorised tramroad; or
- (b) trespasses upon any land of the undertaker in dangerous proximity to the authorised tramroad or to any electrical or other apparatus used for or in connection with the operation of the authorised tramroad,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person shall be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass on the authorised tramroad was clearly exhibited and maintained at the station or other authorised stopping place nearest the place where the offence is alleged to have been committed.

Power to make byelaws

45.—(1) The undertaker may make byelaws regulating the use and operation of, and travel on, the authorised tramway, the maintenance of order on the authorised tramway and on tramway premises, tramcars or other facilities provided in connection with the authorised

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tramway and the conduct of all persons including employees of the undertaker while on tramway premises.

(2) Without prejudice to the generality of paragraph (1), byelaws under this article may make provision—

- (a) with respect to tickets issued for travel on the authorised tramway, the payment of fares and charges and the evasion of payment of fares and charges;
- (b) with respect to interference with, or obstruction of, the operation of the authorised tramway or other facilities provided in connection with the authorised tramway;
- (c) with respect to the use of tobacco or other substances, the consumption of alcohol and food and the prevention of other nuisances;
- (d) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within tramway premises;
- (e) for the safe custody and re-delivery or disposal of any property found on tramcars or tramway premises and for the fixing of the charges made in respect of any such property; and
- (f) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the authorised tramway or on tramway premises.

(3) In paragraphs (1) and (2) references to “tramway premises” are references to premises of the undertaker used in connection with the operation of the authorised tramway.

(4) Byelaws under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (4), if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public, or hindrance to the undertaker in the operation of the tramway, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.

(6) Byelaws under this article shall not come into operation until they have been confirmed by the Secretary of State.

(7) At least 28 days before applying for any byelaws to be confirmed under this article, the undertaker shall publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the times during which a copy of the byelaws will be open to public inspection; and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(8) For at least 28 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws shall be kept at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment.

(9) The undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker may determine.

(10) The Secretary of State may confirm with or without modification, or may refuse to confirm, any of the byelaws submitted under this article for confirmation and, as regards any byelaws so confirmed, may fix a date on which the byelaws shall come into operation; and if no date is so fixed the byelaws shall come into operation after the expiry of 28 days after the date on which they were confirmed.

(11) The Secretary of State may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as he may consider appropriate for the purpose of defraying any administrative expenses incurred by him in connection therewith.

(12) A copy of the byelaws when confirmed shall be printed and deposited at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment, and the undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker shall determine.

(13) The production of a printed copy of byelaws confirmed under this article on which is endorsed a certificate purporting to be signed by a person duly authorised by the undertaker stating—

- (a) that the byelaws were made by the undertaker;
- (b) that the copy is a true copy of the byelaws;
- (c) that on a specified date the byelaws were confirmed by the Secretary of State; and
- (d) the date when the byelaws came into operation,

shall be rebuttable evidence of the facts stated in the certificate.

Power to contract for police services

46.—(1) The undertaker may enter into any agreements with a police authority and its chief officer for the police force maintained by that authority to provide policing services for or in connection with the authorised tramway, including at any tramway premises.

(2) Any such agreement may provide for—

- (a) the undertaker to make such payment or other consideration for those policing services as the parties may agree; and
- (b) such incidental and ancillary matters as the parties consider appropriate.

(3) In this article—

- (a) “chief officer of police” means a chief officer of police within the meaning of the Police Act 1996⁽²²⁾ or the Chief Constable of the British Transport Police Force; and
- (b) “police authority” means a police authority within the meaning of that Act or the British Transport Police Authority within the meaning of the Railways and Transport Safety Act 2003⁽²³⁾.

PART 5

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

47.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised works, or any part of them,

⁽²²⁾ 1996 c. 16.

⁽²³⁾ 2003 c. 20.

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so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Planning permission and supplementary matters

48.—(1) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969⁽²⁴⁾ (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975⁽²⁵⁾, or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999⁽²⁶⁾ as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall not be treated as an outline planning permission.

(3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

Open space

49.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the exchange land and [*insert name of local authority*] has certified that a scheme for the provision of the exchange land as open space has been implemented to its satisfaction.

(2) Upon the requirements of paragraph (1) being satisfied, the exchange land shall vest in [*insert name of local authority*] subject to the like rights, trusts and incidents as attached to the special category land; and the special category land shall thereupon be discharged from all rights, trusts and incidents to which it was previously subject.

⁽²⁴⁾ S.I. 1969/17.

⁽²⁵⁾ S.I. 1975/148.

⁽²⁶⁾ S.I. 1999/1892.

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(3) In this article—

“the special category land” means the land described as open space on the plan entitled “Open Space Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which exchange land is to be provided; and

“the exchange land” means the land described as exchange land on the plan entitled “Open Space Plan” attached to the land plan.

Power to transfer undertaking

50.—(1) The undertaker may, with the consent of the Secretary of State—

(a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made by virtue of paragraph (1), references in this Order to the undertaker shall include references to the transferee or the lessee.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the undertaker.

Disclosure of confidential information

51. A person who—

(a) enters a factory, workshop or workplace in pursuance of the provisions of article 19 (protective works to buildings) or 21 (power to survey and investigate land); and

(b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret,

shall be 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 performing his duty in connection with the purposes for which he was authorised to enter the land.

Statutory undertakers etc.

52. The provisions of Schedule 12 (provisions relating to statutory undertakers etc.) to this Order shall have effect.

Minerals

53. 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

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

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Certification of plans etc.

55. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, 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, sections and plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

56.—(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 (6) 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 of the Interpretation Act 1978⁽²⁷⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he 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, his last known address at the time of service.

(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 his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him 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 shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his consent to the use of electronic transmission 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 he requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) A person may revoke his consent to the use of electronic transmission 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) he shall give notice in writing or by electronic transmission revoking any consent given by him for that purpose; and

(27) 1978 c. 30.

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(b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

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

Arbitration

58. Any difference under any provision of this Order, unless otherwise provided for, shall 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.”