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STATUTORY INSTRUMENTS

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**2016 No. 1035**

**The Transport for Greater Manchester (Light Rapid Transit System) (Trafford Park Extension) Order 2016**

**PART 2**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct and maintain works**

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

(2) Subject to article 8 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (7), 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 any vehicular and pedestrian traffic on the authorised transit system;
- (c) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (d) works for the strengthening, alteration or demolition of any building;
- (e) works to, including the maintenance of, any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (f) works to alter the course of, or otherwise interfere with, watercourses;
- (g) landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works; and
- (h) facilities and works for the benefit or protection of land or premises affected by the other authorised works.

(4) Subject to paragraph (7), the undertaker may carry out and maintain 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.

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

(6) Where the undertaker lays down conduits for the accommodation of cables or other apparatus for the purposes of or associated with the authorised works 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.

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

- (a) within the Order limits; or
- (b) within the boundaries of any street.

(8) The powers of this article must not be exercised within the boundaries of a street outside of the Order limits without the consent of the street authority but such consent may not be unreasonably withheld.

(9) Regulation 12(1)(a) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010<sup>(1)</sup> does not apply to the carrying out of a relevant flood risk activity for the purpose of, or in connection with, the construction of the authorised works.

(10) Section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991<sup>(2)</sup> and any byelaws made under that Act or the Water Resources Act 1991<sup>(3)</sup> do not apply to anything done under or in pursuance of this Order.

(11) Regardless of the powers conferred by paragraph (3)(e) the undertaker and a person responsible for any street furniture or apparatus may enter into agreements for that person to undertake under the powers conferred by this article or under its own powers any works to the apparatus which may be required by the undertaker for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(12) Except to the extent that they conform to the scheduled works, the undertaker must not construct any part of Works Nos. 1, 2, 3 and 3A authorised by section 4 (power to make works) of the Greater Manchester (Light Rapid Transit System) Act 1992<sup>(4)</sup> or the work authorised by the Greater Manchester (Light Rapid Transit System) (Trafford Park) Order 2001<sup>(5)</sup> (as detailed in Schedule 1 (scheduled works) to that Order).

### **Power to deviate**

**8.—**(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 and land plans within the permanent limits relating to that work shown on those plans; and
- (b) deviate vertically from the levels shown on the sections—
  - (i) to any extent not exceeding 3 metres upwards; and
  - (ii) to any extent downwards as may be necessary or expedient.

(2) In constructing or maintaining any work or part of a work shown on the works and land plans as being situated in a street and for which no limits of deviation are shown on those plans, the undertaker may deviate laterally within the boundaries of that street.

(3) The undertaker may, in constructing or maintaining the scheduled works, 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.

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(1) [S.I. 2010/675](#) as amended by the Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2016 ([S.I. 2016/475](#)).

(2) [1991 c. 59](#).

(3) [1991 c. 57](#).

(4) [1992 c. xviii](#).

(5) [S.I. 2001/1367](#).

(4) The powers conferred by paragraph (3) must not be exercised in the case of any authorised street tramway without the consent of the street authority, but such consent must not be unreasonably withheld.

### **Designation of works**

**9.**—(1) Regardless of anything in the description of the scheduled works, the whole or any part of the scheduled works may be constructed within the limits of deviation for that work either along a street as a street tramway or off-street as a tramroad and so far as it is constructed as a street tramway or tramroad it is to 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—

- (a) any part of the authorised transit system which has been constructed as a tramroad becomes a street tramway, it is to be treated for the purposes of this Order as if it were designated as a street tramway; and
- (b) any part of the authorised transit system which has been constructed as a street tramway becomes a tramroad, it is to be treated for the purposes of this Order as if it were designated as a tramroad.

### *Streets*

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

**10.**—(1) The undertaker may alter the layout of, and carry out other ancillary works in, any street specified in column (1) of Schedule 2 (streets subject to alteration of layout) in the manner specified in relation to that street in column (2) of that Schedule.

(2) Without limitation on the scope of the specific powers conferred by article 7 (power to construct and maintain works) or paragraph (1), but subject to paragraph (3), the undertaker may, for the purpose of constructing, maintaining or using the authorised transit system, alter the layout of any street along which the authorised transit system is or is to be laid and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, the undertaker may—

- (a) increase or reduce the width of the whole or part of any carriageway, kerb, footway, cycle track or verge within the street;
- (b) alter the level of the whole or part of any such carriageway, kerb, footway, cycle track or verge;
- (c) replace or alter the surface or surface treatment of the street;
- (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 for the provision or alteration of parking places, loading bays, bus stop clearways, cycle tracks and bus laybys;
- (f) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999<sup>(6)</sup> and which are carried out in compliance with those regulations;
- (g) carry out works to the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the authorised transit system; and
- (h) make and maintain crossovers, sidings or passing places.

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(6) [S.I. 1999/1026](#).

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

### **Power to keep apparatus in streets**

**11.—**(1) The undertaker may, for the purposes of or in connection with the construction, maintenance and use of the authorised transit system, place and maintain in any street in which the transit system is or is to be laid or in any other street any work, equipment or apparatus including, without limitation on the scope of that power, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

(2) The powers conferred by this article must not be exercised within the boundaries of a street outside of the Order limits without the consent of the street authority, but such consent must not be unreasonably withheld.

(3) In this article—

- (a) “apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act; and
- (b) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

### **Power to execute street works**

**12.—**(1) The undertaker may, for the purpose of exercising the powers conferred by article 11 (power to keep apparatus in streets) or any other provision of this Order, enter upon any street and may execute any works required for or incidental to the exercise of those powers including, without limitation on the scope of that power, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

(2) The powers conferred by this article must not be exercised within the boundaries of a street outside of the Order limits without the consent of the street authority, but such consent must not be unreasonably withheld.

### **Stopping up of streets**

**13.—**(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 column (1) of Parts 1, 2 and 3 of Schedule 3 (streets to be stopped-up) to the extent specified, by reference to the letters and numbers shown on the works and land plans, in column (2) of those Parts of that Schedule.

(2) No street specified in column (1) of Parts 1 and 2 (being a street, footpath or bridleway to be stopped up for which a substitute is to be provided) of Schedule 3 is to be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (3) of those Parts 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 subsequently 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 column (1) of Part 3 (being a street to be stopped up for which no substitute is to be provided) of Schedule 3 is to 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;
  - (b) there is no right of access to the land from the street concerned;
  - (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 are 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 is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

- 14.**—(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 (3), prevent all persons from passing along the street.
- (2) Without limitation on the scope of paragraph (1), the undertaker may use any street stopped up under the powers conferred by this article as a temporary working site.
- (3) The undertaker must provide at all times 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.
- (4) Without limitation on the scope of paragraph (1), the undertaker may exercise the powers conferred by this article in relation to the streets specified in column (1) of Schedule 4 (streets to be temporarily stopped up) to the extent specified in column (2) of that Schedule.
- (5) The undertaker must not exercise the powers conferred by this article—
- (a) in relation to any street specified as mentioned in paragraph (4), 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 must not be unreasonably withheld.
- (6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Access to works**

**15.** The undertaker may, for the purposes of the construction, operation or maintenance of the authorised works, form and lay out such means of access, or improve such existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised works, as may be approved by the highway authority, but such approval must not be unreasonably withheld.

### **Maintenance of altered or diverted streets**

16.—(1) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority (confirmation of which must not be unreasonably withheld), unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and after the expiry of that period by and at the expense of the street authority.

(2) Paragraph (1) does not apply in relation to the structure of any bridge or tunnel carrying a street over a transit system or carrying a transit system over a street and except as provided in that paragraph the undertaker is not liable to maintain the surface of any street in, on, under or over which the scheduled works is constructed, or the immediate approaches to any such street, unless otherwise agreed with the street authority.

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

(4) For the purposes of a defence under paragraph (3), the court must in particular have regard to the following matters—

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

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

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

17. If the undertaker abandons the construction of, or permanently ceases to operate any of, the authorised street tramways (“the discontinued tramway”), it must as soon as reasonably practicable and unless otherwise agreed with the street authority—

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

### **Agreements with street authorities**

- 18.**—(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 the authorised transit system) under the powers conferred by this Order;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) the maintenance of any street along or across which a transit system is laid, or of the structure of any bridge or tunnel carrying a street over or under the authorised transit system;
  - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
  - (e) the execution in the street of any of the works referred to in article 12 (power to execute street works).
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question; and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Level crossings**

**19.**—(1) The undertaker may construct and maintain the authorised transit system so as to enable tramcars upon it to cross on the level any highway or other road for the time being crossing the route of the system.

(2) The undertaker may provide, maintain and operate at or near any level crossing such protective equipment as it may determine.

(3) Any traffic sign placed under this article on or near a highway or other road to which the public has access is to be treated for the purposes of section 64(4) (general provisions as to traffic signs) of the 1984 Act as having been placed as provided by that Act.

(4) Without limitation on the scope of article 10 (power to alter layout, etc., of streets), the undertaker may in the exercise of the powers conferred by this article alter the level of any highway or road referred to in paragraph (1).

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

(6) In this article—

“level crossing” means the place at which the authorised transit system crosses a highway or other road on the level under the powers conferred by this article; and

“protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

### *Supplemental powers*

### **Attachment of equipment to buildings**

**20.**—(1) Subject to the following provisions of this article, the undertaker may affix to any building on land listed in the book of reference—

- (a) any brackets, cables, wires, insulators and other apparatus required in connection with the authorised transit system; and
- (b) any lamps, cameras, brackets, pipes, electric lamps and other apparatus required for the provision of additional or substitute street lighting or closed circuit television required in connection with the authorised transit system.

(2) The power conferred by paragraph (1) to affix to any building such apparatus as is mentioned in that paragraph includes the power to extend the apparatus over any land or other building between the frontage of the building to which the apparatus is affixed and the street.

(3) The undertaker must not, under the powers conferred by this article, affix any apparatus to any part of a building without the consent of the relevant owner of that part of the building; and such consent may be given subject to reasonable conditions but must not be unreasonably withheld.

(4) Paragraph (3) has effect without affecting any other right which the undertaker may have or obtain to affix apparatus to a building.

(5) Where —

- (a) the undertaker serves on the relevant owner of part of a building a notice requesting the relevant owner's consent to the affixing of specified apparatus to that part of the building under paragraph (3); and
- (b) the relevant owner does not within the period of 56 days beginning with the date upon which the notice is served give consent unconditionally or give it subject to conditions or refuse it,

the consent is to be deemed to have been withheld.

(6) Where, in the opinion of the undertaker, a consent required under paragraph (3) 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 determine that the consent was not unreasonably withheld.

(7) Where apparatus is affixed to or extended over any part of a building under this article—

- (a) any relevant owner for the time being of that part of the building may serve on the undertaker not less than 6 months' notice requiring the undertaker 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 undertaker has the right as against any person having an interest in the building to retain and maintain the apparatus.

(8) Where, in the opinion of the undertaker, a requirement temporarily to remove any apparatus affixed to or extended over a building under this article during any demolition, reconstruction or repair of the building is not reasonably necessary for that purpose, the undertaker may refer the matter to an arbitrator under article 53 (arbitration) who may either allow the apparatus to be temporarily removed or may order that it is not to be temporarily removed.

(9) The undertaker must 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 (6)(b); and any dispute as to a person's entitlement to compensation, or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(10) In this article, "relevant owner"—

- (a) in relation to a part of a building occupied under a lease or tenancy having an unexpired term exceeding 15 years, means the occupier of that part of the building;
- (b) in relation to any part of an external wall of a building which is the subject of a lease or tenancy having an unexpired term exceeding 15 years not being a part to which sub-



paragraph (a) applies, means the person who for the time being is the lessee or tenant under the lease or tenancy of that part or (if there is more than one such lease or tenancy) the lease or tenancy in possession; or

- (c) in relation to any part of a building or land not falling within sub-paragraph (a) or (b) means the person for the time being entitled to receive the rack rent of that part of the building whether on that person's own account or as trustee for any other person, or who would so receive it if that part of the building were let at a rack rent.

### **Discharge of water**

**21.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation 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 transit system is authorised to be laid, make openings into, and connections with, the watercourse, sewer or drain.

(2) Any dispute arising from the exercise of the power conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(7).

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

(4) The undertaker must 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 must not be unreasonably withheld; and  
(b) where that person has been given the opportunity to supervise the making of the opening.

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010(8).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority or a harbour authority within the meaning of the Harbours Act 1964(9); and  
(b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991(10) have the same meaning as in that Act.

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(7) 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(8) S.I. 2010/675

(9) 1964 c. 40.

(10) 1991 c. 57.

## **Works to safeguard buildings and the operation of the authorised transit system**

22.—(1) Subject to the following provisions of this article, the undertaker may at its own expense and from time to time carry out such safeguarding works to any building lying within the Order limits as the undertaker 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 (other than works authorised by this article); or
- (b) after the completion of the construction of that part of the authorised works (other than works authorised by this article), 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 safeguarding 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 safeguarding works to a building;
- (b) a right under paragraph (3) to enter a building and any land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

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

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of 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 (arbitration).

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

(8) Where—

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

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

(9) Without affecting article 52 (no double recovery), nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act.

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

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

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works;
- (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; and
- (c) any works the purpose of which is to secure the safe operation of the authorised transit system or to prevent or minimise the risk of such operation being disrupted.

### **Planning permission**

**23.** Planning permission which is deemed by a direction under section 90(2A)(11) (development with government authorisation) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of that Act.

### **Power to survey and investigate land, etc.**

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

- (a) survey or investigate any land within the Order limits, any street along which the authorised transit system is authorised to be laid and any street having a junction with such a street;
- (b) without limitation on the scope 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 limitation on the scope of sub-paragraph (a), carry out archaeological investigations on any such 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 of the 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 undertaker—

- (a) must, if so required, before or after entering the land produce written evidence of that person’s authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to 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,

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

but such consent must not be unreasonably withheld.

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

(6) Nothing in this article overrides the requirement to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979<sup>(12)</sup>.

### **Mode of construction and operation of transit system**

**25.**—(1) The authorised transit system must be operated by electricity or, in an emergency or for the purposes of maintenance, by diesel power or other means.

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

(3) Where the authorised transit system 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 must take such care as in all the circumstances is reasonable to ensure that the authorised transit system 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 must have particular regard to the character and usage of the street or other place and to those who could reasonably be expected to use it.

(5) Where the authorised transit system has been constructed in a street, works by any person which affect or are likely to affect the undertaker's obligations under paragraph (3), including works to any street surfaces and works affecting any equipment or apparatus placed in the street under article 11 (power to keep apparatus in streets), must not be carried out without the consent of the undertaker, which may be given subject to such reasonable terms and conditions as the undertaker may require but must not be unreasonably withheld.

### **Obstruction of construction of authorised works**

**26.** 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,

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

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(12) 1979 c. 46.