
STATUTORY INSTRUMENTS

2016 No. 545

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

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

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

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

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

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

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

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

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

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

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

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

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

Power to deviate, etc.

7.—(1) In constructing or maintaining the authorised tramway, the Executive may—

- (a) deviate laterally from the lines or situations shown on the works plan within the limits of deviation; and
- (b) subject to article 8(3)(b) and (c) (power to alter layout, etc., of streets), deviate vertically from the levels shown on the deposited section—
 - (i) to any extent not exceeding 3 metres upwards; and
 - (ii) to any extent downwards as may be necessary or expedient.

(2) The Executive may in constructing or maintaining the authorised tramway lay down—

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

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

Streets

Power to alter layout, etc., of streets

8.—(1) The Executive may realign the kerbline of the highway at—

- (a) the junction of Paradise Street and Suffolk Street Queensway between points A1 and A2 shown on the works plan; and
- (b) at the junction of Bridge Street and Broad Street between points A3 and A4 so shown.

(2) Without limitation on the scope of the powers conferred by article 6 (power to construct and maintain works) or paragraph (1) but subject to paragraph (3)(a), the Executive may for the purpose of constructing, maintaining or using the authorised tramway alter the layout of any street in the City along which the tramway is or is to be laid, and the layout of any street adjacent to such a street; and, without limitation on the scope of that power, the Executive may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (c) construct, alter or remove traffic islands and central reserves;
- (d) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for tramcars or by carrying out other works for that purpose;

- (e) carry out strengthening and remedial works to the highway;
 - (f) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the tramway;
 - (g) make and maintain crossovers, sidings or passing places; and
 - (h) carry out works for the provision or alteration of parking places.
- (3) The following require the consent of the street authority—
- (a) the exercise of the powers conferred by paragraph (2);
 - (b) the exercise of the power to deviate conferred by article 7(1)(b) (power to deviate, etc.) with respect to the construction or maintenance of the authorised tramway, where it would require the alteration of the level of the carriageway of the street carrying the tramway;
 - (c) the exercise of the power to deviate conferred by article 7(1)(b) with respect to the construction or maintenance of the authorised tramway comprising the alteration of the level or alignment of a highway; or
 - (d) the exercise of the power conferred by article 9 (power to keep apparatus in streets) with respect to the placing in the street of supports for overhead line equipment for the authorised tramway.
- (4) Consent under paragraph (3) must not be unreasonably withheld.

Power to keep apparatus in streets

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

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

Power to execute street works

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

Temporary stopping up of streets

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

(1) 1989 c. 29.

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

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

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

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

Access to works

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

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

Restoration of streets if street tramway discontinued

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

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

Agreements with street authorities

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

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

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) provide for the street authority to carry out any function under this Order which relates to the street in question; and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Supplemental powers

Discharge of water

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

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

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

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

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

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010(3).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991(4) have the same meaning as in that Act.

Safeguarding works to buildings

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

(2) Safeguarding works may be carried out—

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

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

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

- (a) enter the building and land within its curtilage; and

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

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

(4) 1991 c. 57.

(b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out safeguarding works to a building;
- (b) a right under paragraph (3) to enter a building and any land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

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

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

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

(8) Where—

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

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

(9) Without affecting article 42 (no double recovery) nothing in this article relieves the Executive from any liability to pay compensation under section 10(2)(5) (further provision as to compensation for injurious affection) of the 1965 Act.

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

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

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

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

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

Power to construct temporary tramways

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

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

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

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

Power to survey and investigate land

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

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

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

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

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

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

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

Mode of construction and operation of tramway

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

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

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

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