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DRAFT STATUTORY INSTRUMENTS

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**2005 No.**

The Midland Metro (Wednesbury to Brierley Hill  
and Miscellaneous Amendments) Order 2005

PART 1

PRELIMINARY

**Citation**

1. This Order may be cited as the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005.

**Interpretation**

2.—(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 1989 Act” means the Midland Metro Act 1989(4);

“the 1990 Act” means the Town and Country Planning Act 1990(5);

“the 1991 Act” means the New Roads and Street Works Act 1991(6);

“the 1993 Act” means the Railways Act 1993(7);

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000;

“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 tramways and the authorised tramroads) authorised by this Order;

“the authorised works” means the scheduled works and any other works authorised by this Order;

“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;

“bridge” includes a viaduct;

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(1) 1961 c. 33.  
(2) 1965 c. 56.  
(3) 1984 c. 27.  
(4) 1989 c. xv.  
(5) 1990 c. 8.  
(6) 1991 c. 22.  
(7) 1993 c. 43.

- “carriageway” has the same meaning as in the Highways Act 1980<sup>(8)</sup>;
- “the deposited sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;
- “Dudley” means the metropolitan borough of Dudley;
- “the Executive” means West Midlands Passenger Transport Executive;
- “highway” and “highway authority” have the same meaning as in the Highways Act 1980;
- “the land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order;
- “the limits of deviation” means the limits of deviation for the scheduled works shown on the works plans;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;
- “the Order limits” means any of—
- (a) the limits of deviation, or
  - (b) the limits of land to be acquired or used shown on the land plans;
- “owner” in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;
- “Sandwell” means the metropolitan borough of Sandwell;
- “the scheduled works” means the works specified in Schedule 1 to this Order or any part of them;
- “street” includes part of a street;
- “street authority” in relation to a street, has the same meaning as in Part III of the 1991 Act;
- “street tramway” means any part of a tramway which is laid along a street—
- (a) whether or not the section of the street in which its rails are laid may be used by other traffic; or
  - (b) whether the uppermost surface of the rails is level with, lower than, or raised above, the surrounding surfaces of the street;
- “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 provide support and guidance for vehicles carried on flanged wheels;
- “the tribunal” means the Lands Tribunal; and
- “the works plans” means the plans certified by the Secretary of State as the works plans 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 over its surface, and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

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(8) 1980 c. 66.

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

(4) Any reference in this Order to a work identified by the number of the work (or by the number and letter) shall be construed as a reference to the work of that number (or number and letter) authorised by this Order.

(5) References in this Order to points identified by letters (or letters and numbers) shall be construed as references to the points so marked on the works plans.

### **Application of New Roads and Street Works Act 1991**

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 III of the 1991 Act (street works) as major highway 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<sup>(9)</sup> (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings).

(2) In Part III of the 1991 Act, references, in relation to major highway works, to the highway authority concerned shall, in relation to works which are major highway works by virtue of subparagraph (1), be construed as references to the Executive.

(3) The provisions of the 1991 Act mentioned in paragraph (4), and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Executive under the powers conferred by article 14 of this Order where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the Executive.

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

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- 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 alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) shall have effect as if references in section 57 to 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.

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(9) 1980 c. 66.

### **Incorporation of the Railways Clauses Consolidation Act 1845**

4.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(10) shall be incorporated in this Order—

- sections 68 and 69 (accommodation works by company);
- section 71 (additional accommodation works by owners);
- sections 72 and 73 (supplementary provisions relating to accommodation works);
- section 75 (omission to fasten gates);
- sections 87 and 88 (contracts with other companies);
- section 97 (default in payment of tolls);
- sections 103 and 104 (refusal to quit carriage at destination);
- section 105 (carriage of dangerous goods on railway);
- section 144 (defacing of boards);
- section 145 (recovery of penalties);
- section 154 (transient offenders).

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

- “the company” means the Executive;
- “goods” includes any thing conveyed on the authorised tramway;
- “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 tramroads and (subject to paragraph (6)) the authorised street tramways, together with any authorised works ancillary thereto;
- “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 tramway to be constructed under this Order.

(3) In section 69 of the said Act of 1845, as incorporated in this Order, for the words “determined by two justices” to the end there shall be substituted the words “referred to arbitration”.

(4) In section 71 of the said Act of 1845, as incorporated in this Order, the words “, or directed by such justices to be made by the company,” shall be omitted, and for the words “authorised by two justices” there shall be substituted the words “determined by arbitration”.

(5) Any difference arising under section 72 of the said Act of 1845, as incorporated in this Order, shall be referred to arbitration.

(6) Sections 68, 69, 71 to 73 and 75 of the said Act of 1845, as incorporated in this Order, shall only apply to the railways comprised in the authorised tramroads and any authorised works ancillary to those tramroads.

### **Application of the Midland Metro Acts**

5.—(1) The authorised tramway shall be treated as part of the Metro (as defined in the Midland Metro Acts) for the purposes of the following sections of the following Acts—

- (a) sections 3(3), 16, 17, 25, 46 to 52 and 54 of the 1989 Act; and

- (b) section 18 of the (No. 2) 1992 Act,  
but it shall not be so treated for the purposes of the following—
- (i) sections 5(4) and (5), 15, 24, 44 and 45 of the 1989 Act; and
  - (ii) section 24 of the 1992 Act.

(2) The authorised tramway shall be treated as part of the Metro (as defined in the Midland Metro Acts) for the purposes of sections 4 to 7 of the Midland Metro (Penalty Fares) Act 1991<sup>(11)</sup> and of any order made from time to time under sections 3(2) or 5(2) of that Act (whether made before or after this Order comes into force), and expressions defined in section 2 of that Act shall have effect accordingly.

(3) In the application of the Midland Metro Acts to this Order—

- (a) references to the railways board in sections 16 and 17 of the 1989 Act shall be treated as references to a person holding a licence under section 8 of the 1993 Act or a person exempt, by virtue of section 7 of the 1993 Act, from the requirement to be authorised by such a licence;
  - (b) the reference to section 56 of the Transport Act 1962<sup>(12)</sup> in section 17(1) of the 1989 Act shall be treated as a reference to Schedule 5 to the 1993 Act, and section 17(2) of the 1989 Act shall be construed in accordance with section 49(6) of the 1993 Act;
  - (c) references to the railway in sections 46(1) and 48 of the 1989 Act shall be treated as including the authorised tramway;
  - (d) the reference in section 47 of the 1989 Act to any tramway shall be treated as reference to the authorised street tramways;
  - (e) the reference in section 48 of the 1989 Act to any railway of the Metro which is not designated as a tramway shall be treated as a reference to any authorised tramroad;
  - (f) references to railway premises in sections 49 and 52 of the 1989 Act shall be treated as including any premises of the Executive used in connection with the operation or maintenance of the authorised tramway.
- (4) Section 8(4) of the 1989 Act shall have effect for the purposes of the authorised street tramways as it has effect for the purposes of the tramways authorised by that Act.

(5) In this article—

“the Midland Metro Acts” means the 1989 Act<sup>(13)</sup>, the Midland Metro (Penalty Fares) Act 1991, the 1992 Act and the Midland Metro (No. 2) Act 1992<sup>(14)</sup>;

“the 1992 Act” means the Midland Metro Act 1992<sup>(15)</sup>; and

“the (No. 2) 1992 Act” means the Midland Metro (No. 2) Act 1992.

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(11) 1991 c. ii.  
(12) 1962 c. 46.  
(13) 1989 c. xv.  
(14) 1992 c. viii.  
(15) 1992 c. vii.

## PART 2

### WORKS PROVISIONS

#### *Principal powers*

#### **Power to construct and maintain works**

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

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

(3) Subject to paragraph (6), the Executive may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works namely—

- (a) stations, platforms, junctions, stopping places and parking areas (including park and ride sites);
- (b) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised tramway;
- (c) works for the strengthening, alteration or demolition of any building or structure;
- (d) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (e) works to alter the position of any apparatus or street furniture, including mains, sewers, drains, cables and lights;
- (f) without prejudice to the generality of sub-paragraph (e), works to alter the position of any railway track or other railway infrastructure;
- (g) landscaping, environmental and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
- (h) works for the benefit or protection of premises affected by the authorised works.

(4) Subject to paragraph (6), the Executive may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with, or in consequence of, the construction of the scheduled works.

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

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

- (a) within the limits of deviation; or
- (b) on land specified in columns (1) and (2) of Part 1 or 2 of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Part 1 or 2.

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

(8) The relocation of any existing railway track or other railway infrastructure under paragraph (3) (f) shall not affect the application to that track or infrastructure of any enactment (including the Town

and Country Planning (General Permitted Development) Order 1995(16)) authorising or regulating its maintenance or operation.

**Power to deviate, etc.**

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

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation for that work shown on those plans; and
- (b) subject to articles 9(3)(b) and 9(3)(c), deviate vertically from the levels shown on the deposited sections—
  - (i) to any extent not exceeding 3 metres upwards; and
  - (ii) to any extent downwards as may be necessary or expedient.

(2) The Executive may in constructing or maintaining any of the authorised street tramways lay down—

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

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

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

(5) If the highway authority constructs a new road between Little Cottage Street and Cottage Street in Dudley, the Executive may with the consent of the highway authority (such consent not to be unreasonably withheld) construct or reconstruct Work No. 14 so as to extend it westwards within its limit of deviation into Little Cottage Street, and stop up Little Cottage Street between points WA and WB for the purpose.

(6) In the event of the Executive stopping up Little Cottage Street as mentioned in paragraph (5), paragraphs (5) to (7) of article 13 shall apply as if the stopping up were effected under that article.

**Designation of works**

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

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

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

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(16) S.I.1995/418, amended by S.I. 1996/252, 1996/528, 1996/593, 1998/462, 1999/293, 1999/1661, 1999/1783, 2001/1149 and 2003/956.

## *Streets*

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

**9.**—(1) The Executive may alter the layout of, and carry out other ancillary works in, any street 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 powers conferred by article 6 or paragraph (1) but subject to paragraph (3)(a), the Executive may for the purpose of constructing, maintaining or using any authorised street tramway alter the layout of any street in Sandwell or Dudley along which the tramway is or is to be laid, and the layout of any street adjacent to such a street; and, without prejudice to the generality of the foregoing, the Executive may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
  - (b) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
  - (c) construct, alter or remove traffic islands and central reserves;
  - (d) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for tramcars or by carrying out other works for that purpose;
  - (e) carry out works to the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the tramway;
  - (f) make and maintain crossovers, sidings or passing places; and
  - (g) carry out works for the provision or alteration of parking places.
- (3) The following shall 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) with respect to the construction or maintenance of a scheduled work comprising a street tramway, where it would require the alteration of the level of the carriageway of the street carrying the tramway;
  - (c) the exercise of the power to deviate conferred by article 7(1)(b) with respect to the construction or maintenance of a scheduled work comprising the alteration of the level or alignment of a highway; or
  - (d) the exercise of the power conferred by article 10 with respect to the placing in the street of supports for overhead line equipment for any authorised street tramway.
- (4) Consent under paragraph (3) shall not be unreasonably withheld.

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

**10.**—(1) The Executive may, subject to article 9(3)(d), for the purposes of or in connection with the construction, maintenance and use of any authorised street tramway, place and maintain in any street in which the tramway is, or is to be, laid and in any street having a junction with such a street any work, equipment or apparatus including but without prejudice to the generality of the foregoing, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

- (2) In this article—
- (a) “apparatus” has the same meaning as in Part III of the 1991 Act;
  - (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989<sup>(17)</sup>; and

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(17) 1989 c. 29.

- (c) the reference to any work, equipment or apparatus in a street includes a reference to any work, equipment or apparatus under, over, along or upon the street.

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

**11.** The Executive may, for the purpose of exercising the powers conferred by article 10 and the other provisions of this Order, enter upon any street in which any authorised street tramway is or is to be laid and any street having a junction with such a street, and may execute any works required for or incidental to the exercise of those powers including, without prejudice to the generality of the foregoing, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

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

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

- (a) the private means of access at Tipton Road at point LA in Dudley, and
- (b) the private means of access at Cottage Street at points XB and XC in Dudley;

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

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

### **Permanent stopping up of streets**

**13.—(1)** Subject to the provisions of this article, the Executive may, in connection with the construction of the authorised works, stop up each of the streets mentioned 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 shown on the works plans, in column (3) of Parts 1 and 2 of that Schedule.

(2) No street specified in columns (1) to (3) of Part 1 of Schedule 4 (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 until the date of practical completion of the new street to be substituted for it (as specified in relation to it in column (4) of that Part of that Schedule) and the new street is open for use.

(3) The date of practical completion of a new street for the purposes of paragraph (2) shall be determined by the street authority or in the event of dispute shall be determined by arbitration.

(4) No part of a street specified in columns (1) to (3) 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 stopped up under this article unless all the land which abuts it falls within one or more of the following categories, namely—

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

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

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) the Executive may, without making any payment, 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 Executive.

(6) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961(18).

(7) This article is subject to paragraph 2 of Schedule 10 to this Order.

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

**14.**—(1) The Executive may, during and for the purposes of the execution of the authorised works, temporarily stop up, alter or divert any street in Sandwell or Dudley and may for any reasonable time—

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

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

(3) Without prejudice to the generality of paragraph (1), the Executive may exercise the powers of 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 shown on the works plans, in columns (3) and (4) of that Schedule.

(4) The Executive shall not exercise the powers of this article—

- (a) in relation to the 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, but such consent shall not be unreasonably withheld.

### **Access to works**

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

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

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

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

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

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

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

(4) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Executive shall not by reason of any duty under this

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(18) 1961 c. 33.

article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

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

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

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

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

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

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

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

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

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

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

### **Agreements with street authorities**

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

- (a) the construction of any new street (including any structure carrying the street over or under any authorised tramway) under the powers conferred by this Order;
  - (b) the maintenance of the structure of any bridge carrying a highway over any authorised tramway or any authorised tramway over a highway;
  - (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
  - (d) the execution in the street of any of the works referred to in article 11.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question, and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Level crossings**

**20.**—(1) The Executive may construct the authorised tramroads so as to carry them on the level across the highways or other roads specified in Schedule 6 to this Order.

(2) Where, by virtue of the creation of a highway or other road after the day on which application was made for this Order under section 6 of the 1992 Act, any authorised tramroad would cross that highway or road, then the Executive may construct the tramroad so as to carry it on the level across the highway or road.

(3) The Executive may provide, maintain and operate at or near any new level crossing such barriers or other protective equipment as the Secretary of State may in writing approve.

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

(5) Without prejudice to the generality of articles 6 and 9, the Executive may in the exercise of the powers of this article alter the level of any highway or road specified in Schedule 6 to this Order or referred to in paragraph (2).

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

(7) In this article—

“barrier” includes gate;

“new level crossing” means the place at which an authorised tramroad 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.

### **Closure of level crossings**

**21.**—(1) The Executive may, in connection with the construction of the authorised works, stop up—

- (a) so much of footpath FP82 in Sandwell as lies between points AP and AQ; and
  - (b) so much of Bagnall Street and Eagle Lane in Sandwell as lies between points AT and AU.
- (2) On a highway or part of a highway being stopped up under this article—
- (a) all rights of way over or along it shall be extinguished;

(b) the place where the former highway crossed a railway shall cease to be a level crossing for the purposes of any enactment.

(3) The Executive shall not exercise the powers conferred by paragraph (1)(a) until a new footpath has been provided between points AP and AR and between points AS and AQ, and a footbridge has been provided between points AR and AS.

(4) The Executive shall not exercise the powers conferred by paragraph (1)(b) until a new footpath and cycleway has been provided between points AU and AV, and a foot and cycle bridge has been provided between points AT and AV.

(5) The Executive may postpone—

(a) the exercise of the powers conferred by sub-paragraph (a) of paragraph (1) until such time as railway services for the carriage of freight are, or are to be, re-established by Network Rail Infrastructure Limited (or another holder of a licence under section 8 of the 1993 Act) on a railway line also crossing the part of footpath FP82 in Sandwell referred to in that sub-paragraph; and

(b) the exercise of the powers conferred by sub-paragraph (b) of paragraph (1) until such time as services are, or are to be, so re-established on a railway line also crossing the part of Bagnall Street or Eagle Lane in Sandwell referred to in that sub-paragraph;

and if it does so, until those powers are exercised, footpath FP82 in Sandwell and (as the case may be) Bagnall Street and Eagle Lane in Sandwell shall be treated for the purposes of article 20 as if they were specified in Schedule 6 to this Order.

(6) 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 I of the Land Compensation Act 1961(19).

### *Supplemental powers*

#### **Discharge of water**

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

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

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

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

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

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(20).

(7) In this article—

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

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

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

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

(3) Where—

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

the consent shall be deemed to have been withheld.

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

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

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

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

(7) Nothing in this article shall prejudice the power of the Executive to acquire a new right under article 29 to attach apparatus to buildings.

(8) In this article—

“building” includes any structure (including a bridge); and

“relevant owner”—

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

### **Safeguarding works to buildings**

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

(2) Safeguarding works may be carried out—

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

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

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

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

(5) Before exercising—

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

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

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 57.

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

(8) Where—

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

the safeguarding works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,  
the Executive shall compensate the owners and occupiers of the building for any damage sustained by them.

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

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

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

(12) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection; and
- (b) “safeguarding works”, in relation to a building means—
  - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
  - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

#### **Power to construct temporary tramways**

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

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

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

(3) The provisions of articles 9(2), 10 and 11 and of article 44 shall apply in relation to temporary tramways laid under this article as they apply in relation to authorised street tramways.

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

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

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

- (f) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (e).
- (2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the Executive—
  - (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
  - (b) may take with him such vehicles and equipment as are necessary for the purpose of exercising any of the powers conferred by paragraph (1).
- (4) No trial hole shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.
- (5) The Executive shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the 1961 Act.

#### **Mode of construction and operation of tramway**

- 27.—(1) The authorised tramway shall be operated by electricity or, in an emergency or for the purposes of construction or maintenance, by diesel power or other means.
- (2) The authorised tramway shall be constructed on a nominal gauge of 1,435 millimetres.
- (3) Where a tramway is constructed along a street or in any place to which the public has access (including any place to which the public has access only on the making of a payment), the Executive shall take such care as in all the circumstances is reasonable to ensure that the tramway is constructed and maintained so that the street or other place is safe for other users.
- (4) When considering what measures are required under paragraph (3), the Executive shall have particular regard to the character and usage of the street or other place and to those who could reasonably be expected to use it.

#### **Temporary interference with waterways**

- 28.—(1) Without prejudice to the generality of the powers conferred by article 6, the Executive may in connection with the construction of Work No. 1D, 1E, 3B, 12 or 14—
  - (a) temporarily interfere with any relevant waterway, by constructing or maintaining temporary works at any point within the Order limits as it considers necessary or expedient;
  - (b) temporarily moor or anchor barges or other vessels or craft in any relevant waterway, load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials in connection with the construction of the works; and
  - (c) temporarily close any relevant waterway, or a part of it, to navigation.
- (2) The power conferred by paragraph (1)(c) shall be exercised in a way which secures—
  - (a) that no more of a relevant waterway is closed to navigation at any time than is necessary in the circumstances; and
  - (b) that, if complete closure of a relevant waterway to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use it.
- (3) Any person who suffers loss by reason of the interference by virtue of this article with any private right of navigation shall be entitled to compensation to be paid by the Executive to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(4) In this article “relevant waterway” means the Tame Valley Canal, the Walsall Canal, the Birmingham Canal, the Pensnett Canal and the Dudley Canal.

## PART 3

### ACQUISITION AND POSSESSION OF LAND

#### *Powers of acquisition*

#### **Power to acquire land**

**29.** The Executive may acquire compulsorily—

- (a) so much of the land shown on the land plans within the limits of deviation and described in the book of reference as may be required for or in connection with the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Part 1 of Schedule 2 to this Order (being land shown on the land plans and described in the book of reference) as may be required for any of the purposes specified in relation to that land in column (3) of that Part;

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

#### **Application of Part I of the Compulsory Purchase Act 1965**

**30.**—(1) Part I of the 1965 Act, insofar 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<sup>(21)</sup> applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect as if—

- (a) 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; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—
  - (i) in a case where the notice to treat relates only to the acquisition of an easement or other right over the land, a reference to notice of one month; or
  - (ii) in any other case, a reference to notice of 3 months.

#### **Application of Compulsory Purchase (Vesting Declarations) Act 1981**

**31.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981<sup>(22)</sup> shall apply as if this Order were a compulsory purchase order.

(2) In its application by virtue of paragraph (1), the Compulsory Purchase (Vesting Declarations) Act 1981 shall have effect with the following modifications.

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

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<sup>(21)</sup> 1981 c. 67.

<sup>(22)</sup> 1981 c. 66.

“(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 the London Gazette and in a local newspaper circulating in the area in which the land is situated”.

(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 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 the London Gazette and 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 Compulsory Purchase Act 1965 shall be construed as references to that Act as applied to the acquisition of land under article 29.

### **Power to acquire rights**

**32.**—(1) The Executive may acquire compulsorily such easements or other rights over any land referred to in sub-paragraph (a) or (b) of article 29 as may be required for any purpose for which that land may be acquired under that provision.

(2) The Executive may acquire compulsorily such easements or other rights over any land specified in columns (1) and (2) of Part 2 of Schedule 2 to this Order (being land shown on the land plans and described in the book of reference) as may be required for any of the purposes specified in relation to that land in column (3) of that Part.

(3) In paragraphs (1) and (2), the power compulsorily to acquire easements or other rights includes the power to do so by creating them as well as by acquiring easements or other rights already in existence.

(4) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 to this Order), where the Executive acquires a right over land under this Order, the Executive shall not be required to acquire a greater interest in it.

(5) Schedule 7 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 Order of a right over land by the creation of a new right.

### **Rights under or over streets**

**33.**—(1) The Executive 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 connected with or ancillary to the authorised tramway.

(2) The power under paragraph (1) may be exercised in relation to a street without the Executive being required to acquire any part of the street or any easement or right in the street.

(3) The Executive shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) where the street is a highway; but where the street is not a highway any person suffering loss by the exercise of that power shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(4) Paragraphs (2) and (3) shall not apply in relation to—

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

#### *Temporary possession of land*

#### **Temporary use of land for construction of works**

**34.**—(1) The Executive may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of—
  - (i) any of the land specified in columns (1) and (2) of Schedule 8 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, and
  - (ii) subject to paragraph (9), any of the general land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from the land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

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

(3) The Executive may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of the land specified in columns (1) and (2) of Schedule 8 to this Order, after the end of the period of one year beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 8 to this Order; or
- (b) in the case of the general land, after the end of the period of one year beginning with the date of completion of the work or works for which temporary possession of the land was taken unless the Executive has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

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

(5) The Executive 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 I of the 1961 Act.

(7) Without prejudice to article 54, 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) Where the Executive takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(9) Paragraph (1)(a)(ii) shall not authorise the Executive to take temporary possession of—

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

(10) In this article—

“building” includes any structure or erection; and

“the general land” means any land within the Order limits other than—

- (a) the land specified in columns (1) and (2) of Part 2 of Schedule 2 to this Order;
- (b) the land specified in columns (1) and (2) of Schedule 8 to this Order;
- (c) the land in Dudley shown numbered 560 to 565, 620, 729 and 730 on the land plans;
- (d) the land in Sandwell shown numbered 503, 535 to 537, 545, 546, 631, 704 and 705 on the land plans.

### **Temporary use of land for maintenance of works**

**35.—**(1) At any time during the maintenance period relating to any scheduled works, the Executive may—

- (a) enter upon and take temporary possession of any land within the Order limits and lying within 20 metres from those works if such possession is reasonably required for the purpose of, or in connection with, maintaining the works or any ancillary works connected with them;
- (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 Executive to take temporary possession of—

- (a) any dwelling house or garden belonging to a dwelling house;
- (b) any building (other than a dwelling house) if it is for the time being occupied; or
- (c) any land specified in columns (1) and (2) of Part 2 of Schedule 2 to this Order (but without prejudice to the power to acquire rights pursuant to article 32(2) in relation to that land).

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

(4) The Executive may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken and restore the land to the reasonable satisfaction of the owners of the land.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the Executive shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The Executive 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 I of the 1961 Act.

(8) Without prejudice to article 54, 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 Executive takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) The Executive may not, in the exercise of the powers of this article, enter—

- (a) the land specified in columns (1) and (2) of Part 2 of Schedule 2 to this Order;
- (b) the land in Dudley shown numbered 560 to 565, 620, 729 and 730 on the land plans;
- (c) the land in Sandwell shown numbered 503, 535 to 537, 545, 546, 631, 704 and 705 on the land plans.

(11) In this article—

- (a) “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;
- (b) “building” includes structure or any other erection; and
- (c) any reference to land within a specified distance of a work includes, in the case of work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

### **Temporary use of land for carrying out of accommodation and mitigation works**

**36.**—(1) The Executive may, in relation to any of the land in Dudley shown numbered 560 to 565, 729 and 730 on the land plans and the land in Sandwell shown numbered 503, 535 to 537, 545, 546, 631, 704 and 705 on those plans, enter upon and take temporary possession of the land and carry out any such works on or with respect to it as are referred to in article 6(3)(g) and (h).

(2) The works carried out under paragraph (1) are in the following provisions of this article referred to as “the accommodation works”.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Executive shall serve notice of the intended entry on the owners and occupiers of the land, together with a specification and description of the accommodation works that the Executive intends to carry out on the land.

(4) Any person on whom a notice has been served under paragraph (3) may, by serving a counter notice within the period of 21 days beginning with the day on which the notice was served on him, require the question whether the accommodation works should be carried out to be referred to arbitration under article 57.

(5) The Executive may not remain in possession of any land under this article after the completion of the accommodation works for which possession was taken; but it may upon not less than 14 days' notice served on the occupier of the land, enter thereafter for the purpose of inspecting and remedying any defects in the accommodation works.

(6) The Executive shall pay compensation to the owners and occupiers of any 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) Where the carrying out of the accommodation works has mitigated the amount of any loss or damage arising from the carrying out of any of the other works authorised by this Order, that mitigation of loss or damage shall be taken into account in calculating the compensation (if any) payable under this Order or any other enactment in respect of that loss or damage.

(8) 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 I of the 1961 Act.

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

### *Compensation*

#### **Disregard of certain interests and improvements**

**37.**—(1) In assessing the compensation (if any) 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.

### *Supplementary*

#### **Acquisition of part of certain properties**

**38.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 30) 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 factory 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 Executive 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 Executive 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 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 Executive is authorised to acquire compulsorily under this Order.

(8) If the Executive 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) that 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 Executive 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 Executive 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 it 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 factory or of land consisting of a house with a park or garden, the Executive 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 rights of way**

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

- (a) as from the acquisition of the land by the Executive, whether compulsorily or by agreement;
- (b) on the entry on the land by the Executive under section 11(1) or (2) of the 1965 Act; or

(c) as from the use by the Executive for the purposes of the authorised works of land in which the Executive hold a legal estate,  
whichever is sooner.

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

(3) 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 I of the 1961 Act.

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act or paragraph 2 of Schedule 10 to this Order applies.

(5) Paragraphs (1) and (2) shall have effect subject to any agreement made (whether before or after this Order comes into force) between the Executive and the person entitled to the private right of way.

(6) Paragraph (1) shall have effect subject to any notice given by the Executive that that paragraph shall not apply to any right of way specified in the notice where the notice is given before whichever is the soonest of the events specified in sub-paragraphs (a) to (c) of that paragraph.

(7) Paragraph (2) shall have effect subject to any notice given by the Executive at any time before or after possession is taken that that paragraph shall not apply to any right of way specified in the notice or shall only apply to the right of way to the extent specified in the notice.

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

#### **Time limit for exercise of powers of acquisition**

**40.**—(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 I of the 1965 Act, as applied to the acquisition of land by article 30; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(23)</sup>, as applied by article 31.

(2) The powers conferred by article 34 shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the Executive 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**

**41.**—(1) The Executive may operate and use the authorised tramway and the 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 section 54 of the 1989 Act (as applied by article 5), the Executive shall, for the purpose of operating the authorised tramway, have the exclusive right—

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(23) 1981 c. 66.

(a) to use the rails, foundations, cables, masts, overhead wires and other apparatus used for the operation of the tramway; and

(b) to occupy any part of the street in which that apparatus is situated.

(3) Any person who, without the consent of the Executive 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 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.

### **Maintenance of approved works etc.**

**42.**—(1) Where, pursuant to regulations<sup>(24)</sup> made under section 41 of the 1992 Act (approval of works, plant and equipment), approval has been obtained from the Secretary of State with respect to any works, plant or equipment (including vehicles) forming part of the authorised tramway, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the authorised tramway.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, the Executive shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

### **Power to charge fares**

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

### **Traffic signs**

**44.**—(1) The Executive may, for the purposes of, or in connection with the operation of, the authorised 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 along which tramcars using the authorised tramway are run.

(2) The Executive—

(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.

(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 Executive 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

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(24) See S.I. 1994/157.

tramcars using the authorised tramway are run shall consult with the Executive as to the placing of any traffic sign which would affect the operation of the authorised tramway.

(5) Tramcars shall be public service vehicles for the purposes of section 122(2)(c) of the 1994 Act.

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

### **Tree preservation orders**

45. The following, namely—

- (a) an order under section 198(1) of the 1990 Act (tree preservation orders); and
- (b) section 211(1) of that Act (which prohibits the doing in a conservation area of any act which might be prohibited by a tree preservation order),

shall not apply to any exercise of the powers in section 46 (power to lop trees over hanging railway) of the 1989 Act (including that section as applied by this Order).

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

46. Any person who, without reasonable excuse, obstructs another person from constructing the authorised tramway or any other authorised works under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Traffic regulation**

47.—(1) Subject to the provisions of this article, the Executive or the Council may, in connection with the construction or operation of the authorised tramway, at any time prior to the expiry of 12 months from the opening of the tramway for use—

- (a) prohibit or restrict in the manner specified in the table in Part 1 of Schedule 9 to this Order the waiting, loading and unloading of vehicles on any road specified in columns (1) and (2) of that table and as described in relation to the road in column (3) of that table;
- (b) make provision in the manner specified in the table in Part 2 of Schedule 9 to this Order as to the permitted direction of movement of vehicular traffic on any road specified in columns (1) and (2) of that table and as described in relation to the road in column (3) of that table;
- (c) prohibit in the manner specified in any of the tables in Part 3 of Schedule 9 to this Order vehicular access on any road specified in columns (1) and (2) of those tables and as described in relation to the road in column (3) of those tables;
- (d) revoke in whole or in part any traffic regulation order in so far as the revocation is consequential on any prohibition, restriction or other provision made under this paragraph.

(2) The Executive or the Council shall not exercise the powers of this article unless it has given not less than 12 weeks' notice in writing of its intention so to do to the chief officer of police in whose area the road is situated; and the Executive shall not exercise the powers of this article unless it has in addition obtained the prior consent of the Council.

(3) The Council shall not exercise the powers of this article unless it has consulted the Executive.

(4) Any prohibition, restriction or other provision made by the Executive or the Council under this article 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 to which the prohibition, restriction or other provision is subject which are in addition to any exceptions provided for in Schedule 9 to this Order.

(5) Any prohibition, restriction or other provision made under this article may be varied or revoked from time to time by subsequent exercises of the powers of this article by the Executive or the Council (whether or not prior to the expiry of the period of 12 months referred to in paragraph (1)), but the Executive shall not vary or revoke any provision previously made by the Council under this article without the consent of the Council, and the Council shall not vary or revoke any provision previously made by the Executive under this article without the consent of the Executive.

(6) Any prohibition, restriction or other provision made under this article may also be varied or revoked from time to time by the Council by a traffic regulation order under the 1984 Act, but the Council shall not by such an order vary or revoke any provision previously made by the Executive under this article without the consent of the Executive.

(7) Any consent required under paragraph (2), (5) or (6) shall not be unreasonably withheld.

(8) In this article “the Council” means Dudley Metropolitan Borough Council.

## PART 5

### MISCELLANEOUS AND GENERAL

#### **Planning permission: supplementary matters**

**48.**—(1) 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).

(2) 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<sup>(25)</sup> 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 the works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act.

(3) 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<sup>(26)</sup> 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 the works authorised by this Order shall not be treated as an outline planning permission.

#### **Statutory undertakers, etc.**

**49.** The provisions of Schedule 10 to this Order shall have effect.

#### **Minerals**

**50.**—(1) Parts II and III of Schedule 2 to the Acquisition of Land Act 1981<sup>(27)</sup> (exception of minerals from compulsory purchase and regulation of the working of mines or minerals underlying an authorised undertaking) shall have effect in relation to land to which article 29 applies as if it were comprised in a compulsory purchase order providing for the incorporation with that order of those Parts of that Schedule.

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<sup>(25)</sup> S.I. 1969/17.

<sup>(26)</sup> S.I. 1999/1892.

<sup>(27)</sup> 1981 c. 67.

(2) In their application by virtue of paragraph (1), Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 shall have effect with the following modifications—

- (a) references to the acquiring authority shall be construed as references to the Executive; and
- (b) references to the undertaking shall be construed as references to the undertaking which the Executive is authorised by this Order to carry on.

### **Saving for highway authorities**

**51.** Nothing in this Order shall affect any power of a highway authority to widen, alter, divert or improve any highway along which the authorised tramway is constructed or operated.

### **Certification of plans etc.**

**52.** The Executive shall, as soon as practicable after the making of this Order, submit one or more copies of the book of reference, the deposited sections, the land plans and the works plans to the Secretary of State for certification that they are, respectively, the book of reference, the deposited sections, the land plans and the works 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**

**53.—**(1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(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<sup>(28)</sup> 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) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

### **No double recovery**

**54.** 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.

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(28) 1978 c. 30.

### **Disclosure of confidential information**

55. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 24 or 26; 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.

### **Withholding of consent**

56. Where it is provided in this Order that any consent or approval is not to be unreasonably withheld, any dispute as to whether it is so unreasonably withheld or as to any conditions subject to which it is given shall (where no other provision is made in this Order with respect to the determination of the dispute in question) be determined by arbitration.

### **Arbitration**

57. Where under this Order (including any provision incorporated in or applied by this Order) any difference (other than a difference to which the provisions of the 1965 Act apply) is to be determined by or referred to arbitration, then the difference 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 notice in writing to the other), by the President of the Institution of Civil Engineers.

### **Protective provisions**

58. Schedule 11 (which contains provisions for the protection of the British Waterways Board, the Environment Agency and Network Rail Infrastructure Limited) shall have effect.

### **Midland Metro Line 1: miscellaneous amendments**

59.—(1) The application of section 14 of the 1984 Act by section 5(4) of the 1989 Act shall cease to have effect in relation to carriages used on tramways forming part of Midland Metro Line 1.

(2) Section 25 of the 1870 Act as applied with modifications by section 4(1) and (2)(b)(i) of the 1989 Act shall have effect with respect to any tramway comprised in Midland Metro Line 1 as if the words “and shall be laid” to the end of the section were omitted; and article 27(3) and (4) shall apply to Midland Metro Line 1 as it applies to the authorised tramway.

(3) The defence provided in paragraph (6) of article 16 shall apply to any failure by the Executive to maintain (or to keep in good condition and repair) a highway under the relevant repairing provisions as it applies to a failure to maintain a highway under that article, and paragraph (7) of that article shall have effect accordingly.

(4) References in this article to any provision of the 1989 Act include a reference to that provision as applied by any of the other Midland Metro Acts 1989 to 1993.

(5) In this article—

“the 1870 Act” means the Tramways Act 1870(29);

“Midland Metro Line 1” means the tramway constructed between Birmingham and Wolverhampton authorised by the 1989 Act, the Midland Metro (No. 2) Act 1992 and the Midland Metro (No. 2) Act 1993;

“the relevant repairing provisions” means—

- (a) section 21 of the 1989 Act, and
- (b) section 28 of the 1870 Act as applied by section 4(1) of the 1989 Act with respect to Midland Metro Line 1.

Signed by authority of the Secretary of State for Transport

26th January 2005

*David Jamieson*  
Parliamentary Under Secretary of State  
Department for Transport