
STATUTORY INSTRUMENTS

2020 No. 141

**The Midland Metro (Birmingham
Eastside Extension) Order 2020**

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Midland Metro (Birmingham Eastside Extension) Order 2020 and comes into force on 4th March 2020.

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 1980 Act” means the Highways Act 1980⁽³⁾;

“the 1984 Act” means the Road Traffic Regulation Act 1984⁽⁴⁾;

“the 1989 Act” means the Midland Metro Act 1989⁽⁵⁾;

“the 1990 Act” means the Town and Country Planning Act 1990⁽⁶⁾;

“the 1991 Act” means the New Roads and Street Works Act 1991⁽⁷⁾;

“the 2005 Order” means the Midland Metro (Birmingham City Centre Extension, etc.) Order 2005⁽⁸⁾;

“the 2017 Act” means the High Speed Rail (London – West Midlands) Act 2017⁽⁹⁾;

“address” includes any number or address used for the purposes of electronic transmission;

“the authorised street tramway” means any street tramway authorised by this Order;

“the authorised tramroad” means any tramroad authorised by this Order;

“the authorised tramway” means the tramway (consisting of the authorised street tramway and the authorised tramroad) authorised by this Order;

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1980 c. 66.
(4) 1984 c. 27.
(5) 1989 c. xv.
(6) 1990 c. 8.
(7) 1991 c. 22.
(8) S.I. 2005/1794.
(9) 2017 c. 7.

“the authorised works” means the scheduled works and any other works authorised by this Order, or any part of them;

“the Authority” means the West Midlands Combined Authority established under article 3 of the West Midlands Combined Authority Order 2016⁽¹⁰⁾;

“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;

“building” includes any structure or erection, or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“cycle track” has the same meaning as in the 1980 Act;

“electric line” has the meaning given by section 64(1) (interpretation etc. of Part 1) of the Electricity Act 1989⁽¹¹⁾;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“footway” has the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the limits of deviation” means the limits of lateral deviation for the scheduled works mentioned in article 8(1)(a) and (2) (power to deviate);

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

“the Order limits” means the permanent limits and the temporary limits;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981⁽¹²⁾;

“parking place” has the same meaning as in section 32 (powers of local authorities to provide parking places) of the 1984 Act;

“the permanent limits” means the limits of land to be acquired or used, and the limits of land with rights to attach equipment to buildings, as shown on the works and land plans and described in the book of reference;

“the scheduled works” means the works specified in Schedule 1 (scheduled works), or any part of them;

“the sections” means the long and cross sections included in the works and land plans;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

“street tramway” means any part of a tramway which is laid along a street whether or not the section of the street in which its rails are laid may be used by other traffic;

“the temporary limits” means the limits of land to be used temporarily as shown on the works and land plans, described in the book of reference and specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken);

“the traffic regulation plans” means the plans certified by the Secretary of State as the traffic regulation plans for the purposes of this Order;

(10) S.I. 2016/653.

(11) 1989 c. 29. There are amendments to section 64(1) not relevant to this Order.

(12) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

“tramcar” means any vehicle (whether or not used for the carriage of passengers) carried on flanged wheels along the rails of a tramway;

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

“tramway” means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which—

- (a) provide support and guidance for vehicles carried on flanged wheels; and
- (b) are laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“watercourse” includes all docks, rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer or drain; and

“the works and land plans” means the plans and sections certified by the Secretary of State as the works and land 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 or under or on land or in the air space over its surface.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(4) References in this Order to points identified by letters, with or without numbers, or by numbers, are to be construed as references to the points so marked on the works and land plans or, in the case of Schedule 8 (traffic regulation), to the points so marked on the traffic regulation plans.

(5) All areas, distances, directions, lengths and points stated in the description of the scheduled works or in any description of powers or lands are approximate and distances between points on a scheduled work are taken to be measured along the scheduled work.

Incorporation of the Railways Clauses Consolidation Act 1845

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**13**) (“the 1845 Act”) are incorporated into this Order as follows—

- 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(**14**) (omission to fasten gates);
- sections 87 and 88 (contracts with other companies);
- section 97 (default in payment of tolls);
- section 103(**15**) (refusal to quit carriage at destination);
- section 105 (carriage of dangerous goods on railway);
- section 144 (defacing of boards); and
- section 145(**16**) (recovery of penalties).

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

(13) 1845 c. 20.

(14) Section 75 was amended by section 49 of the Transport and Works Act 1992 (c. 42).

(15) Section 103 was amended by the Statute Law Revision Act 1892 (c. 19), part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1982 (c. 48).

(16) Section 145 was amended by the Statute Law Revision Act 1892 (c. 19) and part 2 of Schedule 12 to the Transport Act 1962 (c. 46).

“the company” means the Authority;

“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 tramway, together with any authorised works ancillary to the authorised tramway;

“the special Act” means this Order; and

“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.

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

(4) In section 71 of the 1845 Act, as incorporated in this Order, omit the words “, or directed by such justices to be made by the Company,” and for the words “authorised by two justices” substitute “determined by arbitration”.

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

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

Application of the Midland Metro Acts

4.—(1) The authorised tramway is to be treated as part of the Metro (as defined in the Midland Metro Acts) for—

(a) the purposes of the following provisions of the 1989 Act—

section 3(3) (incorporation and application of enactments relating to railways);

section 16 (agreements with British Railways Board);

section 17 (transport consultative committee);

section 25 (provisions as to use of electrical energy);

section 46 (power to lop trees overhanging railway);

section 47 (removal of obstructions);

section 48 (for better prevention of trespass on railways);

section 49 (byelaws relating to Metro);

section 50 (modification of railway regulation enactments);

section 51 (carriages on Metro deemed public services vehicles);

section 52 (power to contract for police); and

section 54 (powers of disposal, agreements for operation, etc.); and

(b) the purposes of section 18 (application of landlord and tenant law to Metro leases) of the (No. 2) 1992 Act,

but it is not to be so treated for—

(i) the purposes of the following provisions of the 1989 Act—

section 5(4) and (5) (application of provisions of Public Utilities Street Works Act 1950 and Road Traffic Regulation Act 1984);

section 15 (gauge of railways and restrictions on working);
section 24 (attachment of brackets, etc., to buildings for purposes of works);
section 44 (insulation against noise); and
section 45 (orders for insulating new buildings); and

(ii) section 24 (authorisation of new level crossings) of the 1992 Act.

(2) The authorised tramway is to be treated as part of the Metro (as defined in the Midland Metro Acts) for the purposes of sections 4 to 7 (provisions relating to penalty fares) of the Midland Metro (Penalty Fares) Act 1991⁽¹⁷⁾ and of any order made from time to time under sections 3(2) (operation of Act) or 5(2) (penalty fares) of that Act (whether made before or after this Order comes into force), and expressions defined in section 2 (interpretation) of that Act have effect accordingly.

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

- (a) references to the railways board in section 16 (agreements with British Railways Board) and section 17 (transport consultative committee) of the 1989 Act are to be treated as references to a person holding a licence under section 8 (licences) of the 1993 Act or a person exempt, by virtue of section 7 (exemptions from section 6) of the 1993 Act, from the requirement to be authorised by such a licence;
- (b) the reference to section 56 (the Passengers' Council and London Transport Users' Council) of the Transport Act 1962⁽¹⁸⁾ in section 17(1) (Transport consultative committee) of the 1989 Act is to be treated as a reference to section 25 (proposal to discontinue excluded services) of the Railways Act 2005⁽¹⁹⁾ and for the words “for references” until the end of that subsection substitute “these services were special procedure excluded services for the purposes of that section”;
- (c) references to the railway in section 46(1) (power to lop trees overhanging railway) of the 1989 Act are to be treated as including the authorised tramway;
- (d) the reference in section 47 (removal of obstructions) of the 1989 Act to any tramway is to be treated as reference to the authorised street tramway; and
- (e) references to railway premises in section 49 (byelaws relating to Metro) and section 52 (power to contract for police) of the 1989 Act are to be treated as including any premises of the Authority used in connection with the operation or maintenance of the authorised tramway.

(4) Section 8(4) (further works and powers) of the 1989 Act has 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 1992 Act” means the Midland Metro Act 1992⁽²⁰⁾;

“the 1993 Act” means the Railways Act 1993⁽²¹⁾;

“the (No. 2) 1992 Act” means the Midland Metro (No. 2) Act 1992⁽²²⁾; and

“the Midland Metro Acts” means the 1989 Act, the Midland Metro (Penalty Fares) Act 1991, the 1992 Act and the (No. 2) 1992 Act.

⁽¹⁷⁾ 1991 c. ii.

⁽¹⁸⁾ 1962 c. 46. Section 56 was amended by [S.I. 2010/439](#).

⁽¹⁹⁾ 2005 c. 14.

⁽²⁰⁾ 1992 c. vii.

⁽²¹⁾ 1993 c. 43.

⁽²²⁾ 1992 c. viii.

Application of the 1991 Act

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

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; 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(23) (dual carriageways and roundabouts) of the 1980 Act or section 184(24) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act, references, in relation to major highway works to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the Authority.

(3) The provisions of the 1991 Act mentioned in paragraph (4) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under those provisions, apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the Authority under the powers conferred by article 14 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(4) The provisions of the 1991 Act(25) referred to in paragraph (3) are—

- (a) section 54(26) (advance notice of certain works), subject to paragraph (5);
- (b) section 55(27) (notice of starting date of works), subject to paragraph (5);
- (c) section 57(28) (notice of emergency works);
- (d) section 59(29) (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 76 (liability for cost of temporary traffic regulation); and
- (i) section 77 (liability for cost of use of alternative route),

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

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(6) Nothing in article 16 (construction and maintenance of new, altered or diverted highways)—

(23) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(24) As amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and section 168(1) and (2) of, and Part 1 of Schedule 8 and paragraph 9 of Schedule 9 to, the New Roads and Street Works Act 1991.

(25) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(26) As also amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and Schedule 9 to the New Roads and Street Works Act 1991 (c. 22).

(27) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(28) As also amended by section 52(3) of the Traffic Management Act 2004.

(29) As amended by section 42 of the Traffic Management Act 2004.

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the Authority is not by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

Disapplication of legislative provisions

6.—(1) The following provisions do not apply to anything done under or in pursuance of this Order—

- (a) regulation 12(1)(a) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016⁽³⁰⁾ in relation to carrying on of a relevant flood risk activity;
- (b) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991⁽³¹⁾;
- (c) any byelaws made under that Act or the Water Resources Act 1991⁽³²⁾; and
- (d) the provisions of the Neighbourhood Planning Act 2017⁽³³⁾ insofar as they relate to the temporary possession of land under articles 34 (temporary use of land for construction of works) and 35 (temporary use of land for maintenance of works) of this Order.

(2) In paragraph (1)(a) “relevant flood risk activity” means anything done under or in pursuance of this Order within paragraph 3(1)(a), (b) or (c) of Schedule 25 (flood risk activities and excluded flood risk activities) to the Environmental Permitting (England and Wales) Regulations 2016.

⁽³⁰⁾ S.I. 2016/1154, as amended by S.I. 2017/1012, S.I. 2017/1075, S.I. 2018/110, S.I. 2018/428 and S.I. 2018/575.

⁽³¹⁾ 1991 c. 59.

⁽³²⁾ 1991 c. 57.

⁽³³⁾ 2017 c. 20.