
STATUTORY INSTRUMENTS

2020 No. 141

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

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

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

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

(3) Subject to paragraph (7), the Authority may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

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

(4) Subject to paragraph (7), the Authority may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

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

(6) Where the Authority lays down conduits for the accommodation of cables or other apparatus for the purposes of or associated with the authorised works it may provide in, or in connection with, such conduits, accommodation for the apparatus of any other person, and manholes and other

facilities for access to such accommodation, and may permit the use of such conduits and facilities on such terms and conditions as may be agreed between it and such other person.

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

- (a) within the Order limits;
- (b) within the limits of deviation; or
- (c) subject to paragraph (8), within the boundaries of any street.

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

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

Power to deviate

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

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

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

(3) The Authority may, in constructing or maintaining the scheduled works, lay down—

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

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

Designation of works

9.—(1) Regardless of anything in the description of the scheduled works the whole or any part of the scheduled works may be constructed within the limits of deviation either along a street as a street tramway or off-street as a tramroad and so far as it is so constructed it is to be treated for the purposes of this Order as if it were so designated.

(2) Where, by means of the creation or extinction of rights of way—

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

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

Streets

Power to alter layout, etc., of streets

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

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

- (a) increase or reduce the width of the whole or part of any carriageway, kerb, footway, cycle track or verge within the street;
- (b) alter the level of the whole or part of any such carriageway, kerb, footway, cycle track or verge;
- (c) replace or alter the surface or surface treatment of the street;
- (d) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for tramcars or by carrying out other works for that purpose;
- (e) carry out works for the provision or alteration of parking places, loading bays, bus stop clearways, cycle tracks and bus laybys;
- (f) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999⁽¹⁾ and which are carried out in compliance with those Regulations;
- (g) carry out works to the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the authorised tramway; and
- (h) make and maintain crossovers, sidings or passing places.

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

Power to keep apparatus in streets

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

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

(3) In this article—

(1) [S.I. 1999/1026](#) was amended by [S.I. 2000/1511](#).

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

Power to execute street works

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

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

Stopping up of streets

13.—(1) Subject to the provisions of this article, the Authority may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 3 (streets to be stopped up) to the extent specified, by reference to the letters shown on the works and land plans, in column (3) of those Parts of that Schedule.

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

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

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

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

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

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

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

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

(7) This article is subject to paragraph 2 of Schedule 9 (provisions relating to statutory undertakers etc.).

Temporary stopping up of streets

14.—(1) The Authority may, during and for the purposes of the construction of the authorised works, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the Authority may use any street stopped up under the powers conferred by this article as a temporary working site.

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

(4) Without limitation on the scope of paragraph (1), the Authority may exercise the powers conferred by this article in relation to the streets specified in Schedule 4 (streets to be temporarily stopped up) to the extent specified in column (2) of that Schedule.

(5) The Authority must not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (4), without first consulting the street authority; and
- (b) in relation to any other street, without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

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

Access to works

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

Construction and maintenance of new, altered or diverted highways

16.—(1) Any highway to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must, unless otherwise agreed by the highway authority and the Authority, be maintained by and at the expense of the Authority 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 must, when completed to the reasonable satisfaction of the highway authority, unless otherwise agreed, be maintained by and at the expense of the Authority for a period of 12 months from its completion and after 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 Authority or carrying a tramroad of the Authority over a highway and except as provided in those paragraphs the Authority is not liable to maintain the surface of

any highway in, on, under or over which the scheduled works are constructed, or the immediate approaches to any such highway, unless otherwise agreed with the highway authority.

(4) In any action against the Authority in respect of loss or damage resulting from any failure by it to maintain a highway under this article, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that the Authority 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.

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

- (a) the character of the highway including its use for a tramway, and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a 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 Authority 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; and
- (e) where the Authority 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 that the Authority had arranged for a competent person to carry out or supervise the maintenance of that part of the highway to which the action relates unless it is also proved that the Authority had given the competent person proper instructions with regard to the maintenance of the highway and that the competent person had carried out those instructions.

Restoration of streets if street tramway discontinued

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

- (a) remove from any street in which the discontinued tramway is laid the rails and any other works, equipment and apparatus which have become redundant; and
- (b) restore, to the reasonable satisfaction of the street authority, the portion of the street along which the discontinued tramway was laid, or redundant works, equipment and apparatus were laid, regard being had to—
 - (i) the condition of the street before the tramway was laid; and
 - (ii) the nature of the traffic using the street at the time of the discontinuance.

Agreements with street authorities

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

- (a) the construction of any new street under the powers conferred by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of any street along or across which the authorised tramway is laid, or of the structure of any bridge or tunnel carrying a street over or under the authorised tramway;

- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (e) the execution in the street of any of the works referred to in article 12 (power to execute street works).
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question; and
 - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Level crossings

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

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

(3) Any traffic sign placed under this article on or near a highway or other road to which the public has access is to be treated for the purposes of section 64(4)(2) (general provisions as to traffic signs) of the 1984 Act as having been placed as provided by that Act.

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

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

(6) In this article—

“level crossing” means the place at which the authorised 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.

Supplemental powers

Attachment of equipment to buildings

20. The Authority may affix to any building constructed at any time within the permanent limits—

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

Discharge of water

21.—(1) The Authority may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works and

for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, or the limits of deviation in any street along which the authorised tramway is authorised to be laid, make openings into, and connections with, the watercourse, sewer or drain.

(2) Any dispute arising from the exercise of the power conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(3).

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

(4) The Authority must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

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

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(4).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, or a local authority; and

(b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991(5) have the same meaning as in that Act.

Works to safeguard buildings and the operation of the authorised tramway

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

(2) Safeguarding works may be carried out—

(a) at any time before or during the construction, in the vicinity of the building, of any part of the authorised works (other than works authorised by this article); or

(b) after the completion of the construction of that part of the authorised works (other than works authorised by this article), at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

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

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

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

(4) 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.

(5) 1991 c. 57.

- (a) enter the building and any land within its curtilage; and
 - (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).
- (5) Before exercising—
- (a) a right under paragraph (1) to carry out safeguarding works to a building;
 - (b) a right under paragraph (3) to enter a building and any land within its curtilage;
 - (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
 - (d) a right under paragraph (4)(b) to enter land,

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

(6) Where notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 53 (arbitration).

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

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

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

(9) Without affecting article 38 (no double recovery), nothing in this article relieves the Authority from any liability to pay compensation under section 10(2)(6) (further provision as to injurious affection) of the 1965 Act.

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

- (11) In this article “safeguarding works”, in relation to a building, means—
- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works;
 - (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and
 - (c) any works the purpose of which is to secure the safe operation of the authorised tramway or to prevent or minimise the risk of such operation being disrupted.

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

Power to survey and investigate land, etc.

23.—(1) The Authority may for the purposes of this Order—

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

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

(3) Notice given in accordance with paragraph (2) must include a statement of the recipient's rights under paragraph (9).

(4) If the Authority proposes to do any of the following, the notice must include details of what is proposed—

- (a) searching, boring or excavating;
- (b) leaving apparatus on the land;
- (c) taking samples;
- (d) an aerial survey;
- (e) carrying out any other activities that may be required to facilitate compliance with the instruments mentioned in paragraph (5).

(5) The instruments referred to in paragraph (4)(e) are—

- (a) [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment(7); or
- (b) Council [Directive 92/42/EEC](#) of 21 May 1992 on the conservation of natural habitats and of flora and fauna(8).

(6) Any person entering land under this article on behalf of the Authority—

- (a) must, if so required, before or after entering the land produce written evidence of that person's authority to do so;
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes;
- (c) may only enter and survey land at a reasonable time; and
- (d) must, if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it as secure against trespassers as when the person entered it.

(7) OJ No. L 26, 28.1.2012, p.1.

(8) OJ No. L 206, 22.7.1992, p. 7.

(7) No trial holes are to be made under this article—

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

but such consent must not be unreasonably withheld.

(8) If either a highway authority or a street authority which receives an application for consent fails to notify the Authority of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (7)(a) in the case of a highway authority; or
- (b) under paragraph (7)(b) in the case of a street authority,

that authority is deemed to have granted consent.

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

(10) Paragraphs (1) to (9) apply in relation to Crown land, however a person may only exercise the power conferred under paragraph (1) in relation to Crown land if the person has permission of the appropriate authority.

(11) In this article, “Crown land” and “the appropriate authority” have the meaning given in section 293(9) (preliminary definitions) of the 1990 Act.

(12) Nothing in this article overrides the requirement to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(10).

Mode of construction and operation of tramway

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

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

(3) Where the authorised tramway is constructed along a street or in any place to which the public has access (including any place to which the public has access only on making a payment), the Authority must take such care as in all the circumstances is reasonable to ensure that the authorised 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 Authority must have particular regard to the character and usage of the street or other place and to those who could reasonably be expected to use it.

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

Obstruction of construction of authorised works

25. Any person who, without reasonable excuse—

(9) As amended by paragraph 6 of Schedule 3 to the Planning and Compulsory Purchase Act 2004 (c. 5), paragraph 7(1) and (4) of Schedule 7 to the Planning (Wales) Act 2015 (anaw 4) and paragraphs 1 and 33 of Schedule 12 to the Housing and Planning Act 2016 (c. 22).

(10) 1979 c. 46.

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

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

Power to construct temporary tramways

26.—(1) The Authority 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 place 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 10(2) (power to alter layout, etc., of streets), 11 (power to keep apparatus in streets), 12 (power to execute street works) and 43 (traffic signs) apply in relation to temporary tramways laid under the powers conferred by this article as they apply in relation to authorised street tramways.

Removal of human remains

27.—(1) In this article, “the specified land” means the land within the Order limits or the limits of deviation.

(2) Before the Authority carries out any development or works that will or may disturb any human remains in the specified land, it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land, the Authority must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the authorised works; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3), the Authority must send a copy of the notice to Birmingham City Council.

(5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the Authority of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the Authority a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the Authority is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The Authority must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph is given to the Authority in respect of any remains in the specified land;
- (b) notice under paragraph (5) is given within the period of 56 days and no application is made under paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the Authority, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which a notice under paragraph (5) relates cannot be identified,

subject to paragraph (10), the Authority must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the Authority thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the Authority is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the Authority must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the Authority to the Registrar-General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the Authority to Birmingham City Council.

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions that may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857(11) (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

(15) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(12) does not apply to the authorised works.

(11) 1857 c. 81. Section 25 was substituted by section 2 of Church of England (Miscellaneous Provisions) Measure 2014 (2014 No. 1).

(12) S.I. 1950/792.