

2020 No. 141

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

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

Made - - - - *12th February 2020*

Coming into force - - *4th March 2020*

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An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006^(a) for an Order under sections 1 and 5 of the Transport and Works Act 1992^(b) (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

(a) S.I. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755, S.I. 2014/469, S.I. 2015/377, S.I. 2015/627, S.I. 2015/1682 and S.I. 2017/979.

(b) 1992 c. 42; section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.

“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(a);

“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(b);

“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;

“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;

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

(b) 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.

(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(a) 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(b) 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(c);

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

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

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(f) (dual carriageways and roundabouts) of the 1980 Act or section 184(g) (vehicle crossings over footways and verges) of that Act.

(a) 1962 c. 46. Section 56 was amended by S.I. 2010/439.

(b) 2005 c. 14.

(c) 1992 c. vii.

(d) 1993 c. 43.

(e) 1992 c. viii.

(f) 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).

(g) 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.

(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(a) referred to in paragraph (3) are—

- (a) section 54(b) (advance notice of certain works), subject to paragraph (5);
- (b) section 55(c) (notice of starting date of works), subject to paragraph (5);
- (c) section 57(d) (notice of emergency works);
- (d) section 59(e) (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)—

- (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(f) 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(g);

(a) 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).
(b) 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).
(c) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
(d) As also amended by section 52(3) of the Traffic Management Act 2004.
(e) As amended by section 42 of the Traffic Management Act 2004.
(f) 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.
(g) 1991 c. 59.

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^(a) 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—

- (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.

^(a) S.I. 1999/1026 was amended by S.I. 2000/1511.

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—

- (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 tramcars upon it to cross on the level any highway or other road for the time being crossing the route of the system.

(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^(a); or
- (b) Council Directive 92/42/EEC of 21 May 1992 on the conservation of natural habitats and of flora and fauna^(b).

(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) 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(c) (preliminary definitions) of the 1990 Act.

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

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

(c) 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).

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

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—

- (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.

(a) 1979 c. 46.

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^(a) (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^(b) does not apply to the authorised works.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

28.—(1) The Authority may acquire compulsorily so much of the land shown on the works and land plans as lying within the permanent limits and described in the book of reference as may be required for or in connection with the authorised works and may use any land so acquired for those purposes or for any other purposes that are ancillary to its tramway undertaking.

(2) This article is subject to article 32 (new rights only to be acquired in certain lands).

(3) This article does not apply to the vaults beneath Corporation Street forming part of the land numbered 4 on the works and land plans.

Application of Part 1 of the 1965 Act

29.—(1) Part 1 (compulsory purchase under the Acquisition of Land Act 1946) of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981^(c) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) In its application by virtue of paragraph (1), Part 1 of the 1965 Act has effect subject to the following modifications.

(3) Omit section 4 (time limit for giving notice to treat).

(4) In section 4A(1)^(d) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase

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

(b) S.I. 1950/792.

(c) 1981 c. 67.

(d) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(6) In section 6(a) (notices after execution of declaration), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A(3) of the Transport and Works Act 1992”.

(7) In section 7(b) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) In Schedule A1(c) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(9) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 28 (power to acquire land).

Powers to acquire new rights

31.—(1) The Authority may compulsorily acquire such easements or other rights over any land within the permanent limits as may be required for any purpose for which that land may be acquired, by creating them as well as by acquiring easements or other rights already in existence.

(2) This article is subject to article 32 (new rights only to be acquired in certain lands).

(3) Subject to Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights)) where the Authority acquires a right over land under paragraph (1) the Authority is not required to acquire a greater interest in that land.

(4) Schedule 5 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right.

(5) Paragraph (1) does not apply to the vaults beneath Corporation Street forming part of the land numbered 4 on the works and land plans.

New rights only to be acquired in certain lands

32. In the case of land specified in Schedule 6 (acquisition of new rights only) the Authority’s powers of compulsory acquisition under article 28 (power to acquire land) and article 31 (power to acquire new rights) are limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of—

- (a) exercising the powers conferred by article 20 (attachment of equipment to buildings) and using and maintaining any apparatus affixed in the exercise of those powers; or
- (b) creating rights of way over any land within the permanent limits.

Rights under or over streets

33.—(1) The Authority may enter upon and appropriate so much of the surface, subsoil of, or air-space over, any street shown on the works and land plans and described in the book of reference as may be required for the purposes of the authorised works and may use the surface, subsoil and air-space for those purposes or any other purpose ancillary to its tramway undertaking.

(2) Paragraph (1) does not apply to—

- (a) any interest in the surface, subsoil of, or air space over, any street which has been acquired by the Secretary of State under the compulsory acquisition powers in the 2017 Act; or
- (b) the vaults beneath Corporation Street forming part of the land numbered 4 on the works and land plans.

(a) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.

(b) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(c) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

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

(5) The Authority must 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, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Without affecting article 38 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(a) (further provision as to compensation for injurious affection) 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 Authority takes possession of land under this article, the Authority is not required to acquire the land or any interest in it.

(9) Section 13(b) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 29(1) (application of Part 1 of the 1965 Act).

(10) Paragraph (1) does not apply to the vaults beneath Corporation Street forming part of the land numbered 4 on the works and land plans.

Temporary use of land for maintenance of works

35.—(1) Subject to paragraph (2), at any time during the maintenance period relating to the scheduled works, the Authority may—

- (a) enter upon and take temporary possession of any land within the Order limits reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; and
- (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) does not authorise the Authority to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied; or
- (c) the vaults beneath Corporation Street forming part of the land numbered 4 on the works and land plans.

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

(4) The Authority 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.

(a) 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.

(b) Section 13 was amended by sections 62(3) and 139 of, and paragraph 27 and 28 of Schedule 13, and part 3 of Schedule 23, to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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

(6) The Authority must 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, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Without affecting article 38 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) 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 Authority takes possession of land under this article, the Authority is not required to acquire the land or any interest in it.

(10) The powers conferred by this article must not be exercised in relation to any street without the consent of the street authority, which must not be unreasonably withheld.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 29(1) (application of Part 1 of the 1965 Act).

(12) In this article, "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 public use.

Compensation

Disregard of certain interests and improvements

36.—(1) In assessing the compensation (if any) payable to any person on the acquisition from that person of any land or interest in land under this Order, the tribunal must 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 that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Set-off for enhancement in value of retained land

37.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity, which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 31 (powers to acquire new rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are acquired; and

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 is to be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 29 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied to this Order by article 30 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The power conferred by article 34 (temporary use of land for construction of works) to enter upon and take temporary possession of land ceases at the end of the period mentioned in paragraph (1); but this paragraph does not prevent the Authority from remaining in possession of land in accordance with article 34 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 Authority may operate and use the authorised tramway and 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 section 54 (powers of disposal agreements for operation etc.) of the 1989 Act (as applied by article 4 (application of the Midland Metro Acts)), the Authority has, for the purpose of operating the authorised tramway, the exclusive right—

- (a) to use the rails, foundations, cables, masts, overhead wires and other apparatus used for the operation of the authorised tramway; and
- (b) to occupy that part of the street in which that apparatus is situated.

(3) Any person who, without the consent of the Authority or other reasonable excuse, uses the apparatus mentioned in paragraph (2) is 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 restricts the exercise of any public right of way over any part of a street in which the apparatus referred to in paragraph (2) is situated, except to the extent that the exercise of the right is constrained by the presence of the apparatus.

Power to charge fares

42. The Authority 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

43.—(1) The Authority may, for the purposes of, or in connection with the construction or operation of the authorised tramway, place or maintain traffic signs on any street in which the authorised tramway is laid or which gives access to such a street, or on any street in connection with any instrument made under article 44 (traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) The Authority—

- (a) must consult with the traffic authority as to the placing of signs; and

necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised tramway—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the Authority.

(3) The Authority must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (4).

(4) The Authority must not exercise the powers conferred by paragraphs (1) and (2) unless it has—

- (a) given not less than 12 weeks' notice in writing of its intention to do so to the chief officer of the police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may, within 28 days of its receipt of notice of the Authority's intention, specify in writing.

(5) Any prohibition, restriction or other provision made by the Authority under this article has 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 and exemptions (in addition to those mentioned in Schedule 8) to which the prohibition, restriction or other provision is subject.

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

(7) Any prohibition, restriction or other provision made under this article may be varied, suspended or revoked from time to time by subsequent exercise of the powers conferred by this article by the Authority.

PART 5

MISCELLANEOUS AND GENERAL

Planning permission

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

Statutory undertakers, etc.

46. The provisions of Schedule 9 (provisions relating to statutory undertakers, etc.) have effect.

Minerals

47. Nothing in this Order affects the right of any person entitled to any mine or minerals of any description whatsoever under a street along which the authorised street tramway is laid to work the mine or get the minerals; but this does not affect any liability (whether civil or criminal) of the

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

person so entitled in respect of damage to the authorised street tramway resulting from the exercise of any such right.

Saving for highway authorities

48. Nothing in this Order affects any power of a highway authority to widen, alter, divert or improve any highway along which the authorised street tramway is constructed.

Disclosure of confidential information

49. A person who—

- (a) enters a factory, workshop or workplace under the provisions of article 22 (works to safeguard buildings and the operation of the authorised tramway) or article 23 (power to survey and investigate land, etc.); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

is 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 that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Defence to proceedings in respect of statutory nuisance

50.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990^(a) in relation to a nuisance falling within paragraph (g) of section 79(1)^(b) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Authority for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61^(c) (prior consent for work on construction sites) of the Control of Pollution Act 1974^(d); or
- (b) that the nuisance is a consequence of the operation or maintenance of the authorised tramway and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the Authority for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article do not affect any rule of common law having similar effect.

Certification of plans. etc.

51. The Authority must, as soon as practicable after the making of this Order, submit copies of the book of reference, the works and land plans and the traffic regulation plans to the Secretary of

(a) 1990 c. 43.

(b) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993 (c. 40), section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995 (c. 25), sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

(c) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(d) 1974 c. 40.

State for certification that they are respectively true copies of the book of reference, the works and land plans and the traffic regulation plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(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 (reference to service by post) of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person 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, the last known address of that person 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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person 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) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission, the requirement is taken to be fulfilled only where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document, the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(a) 1978 c. 30.

SCHEDULES

SCHEDULE 1

Article 2(1)

SCHEDULED WORKS

In the City of Birmingham—

(1) <i>Number of Work</i>	(2) <i>Description of Work</i>
Work No. 1	A tramway 320 metres in length (double line) commencing at a junction with the existing tramway authorised by the 2005 Order at the junction of Bull Street and Corporation Street and running south-east along Bull Street, before turning east at the junction with Dale End to run through land currently occupied by buildings at 1 to 7 Kings Parade, continuing along New Meeting Street and Albert Street before terminating at a point at the back of the footway on the south-west bound carriageway of Moor Street Queensway at its junction with Albert Street. Work No. 1 includes the construction of an underground chamber for the purposes of creating a track paralleling hut at the junction of Corporation Street and Lower Bull Street, the construction of a new retaining wall on Corporation Street, and the regrading of a section of Moor Street Queensway for a distance of 90 metres north and 45 metres south of its junction with Albert Street.
Work No. 2	A tramway 397 metres in length (double line) commencing at the termination of Work No. 1 and running in a north-easterly direction across land forming part of Eastside City Park before turning south to join New Canal Street, terminating at the northern side of the railway viaduct over New Canal Street 30 metres north of the junction with Fazeley Street. Work No. 2 includes the creation of a new highway access between the Clayton Hotel and Masshouse Lane and highway alterations in front of the hotel including the construction of a new footway 110 metres in length.
Work No. 3	A tramway 512 metres in length (double line) commencing at the termination of Work No. 2 passing beneath the railway viaduct and running along New Canal Street, continuing along Meriden Street to terminate at the junction of Meriden Street and Digbeth. Work No. 3 includes the partial demolition of buildings to enable the creation of a new section of highway at the corner of Meriden Street and Digbeth High Street, and the installation of an electricity sub-station and electricity cabinets on land off Meriden Street.
Work No. 4	A tramway 428 metres in length (double line) commencing at the termination of Work No. 3 and running south-east along Digbeth High Street to terminate at a point on High Street Deritend at the junction with Gibb Street. Work No. 4 includes alterations to the junction of Alcester Street and High Street Deritend involving accommodation works for the realignment of the highway.

SCHEDULE 2

Article 10

STREETS SUBJECT TO ALTERATION OF LAYOUT

Key to Schedule 2

RS – Realignment of street

WS – Widening of street by setting back kerb line

NS – Narrowing of street by setting forward kerb line

LB – Creation of parking bay(s), bus layby, taxi rank or service bay

In the City of Birmingham—

<i>(1)</i> <i>Streets subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
Corporation Street	Realign the street between RS01 to RS02 to accommodate the new track alignment and tie in with Birmingham city centre extension scheme.
Corporation Street	Realign the street between RS03 to RS04 to accommodate the revised junction with Bull Street.
Bull Street	Realign the street between RS05 and RS06 to accommodate the new track alignment, the tie in to Birmingham city centre extension scheme and the revised junction with Corporation Street.
Bull Street	Realign the street between RS07 and RS08 to accommodate the new track alignment.
Bull Street	Widen the street between WS01 and WS02 to accommodate the new tracks and revised junction layout with Corporation Street.
Bull Street	Widen the street between WS03 and WS04 to accommodate the new tracks, revised junction layout with Corporation Street and a cycle lane.
Corporation Street	Widen the street between WS05 and WS06 to accommodate the new tracks and revised junction layout with Corporation Street.
Bull Street	Construct bus layby between LB01 and LB02 on the south side of Bull Street to relocate the existing bus layby away from the junction of Bull Street and Corporation Street.
Bull Street	Widen the street between WS07 and WS08 to accommodate the new tracks and the altered junction with High Street.
Dale End	Realign the street between RS09 to RS10 to accommodate the revised junction with Bull Street.

(1) <i>Streets subject to alteration of layout</i>	(2) <i>Description of alteration</i>
Dale End	Construct disabled parking bays and taxi rank between LB03 and LB04 on the west side of Dale End to relocate the existing taxi rank away from the junction of Bull Street, Dale End and High Street.
Dale End	Construct disabled parking bays between LB05 and LB06 on the east side of Dale End to relocate the existing disabled bays from Albert Street and New Meeting Street.
Dale End	Widen the street between WS09 and WS10 to accommodate the new tracks and the altered junctions with Dale End and Albert Street.
High Street	Realign the street between RS11 to RS12 to accommodate the revised junction with Bull Street.
New Meeting Street	Realign the street between RS13 to RS14 to accommodate the new track alignment.
New Meeting Street	Widen the street between WS11 and WS12 to accommodate the new tracks and the altered junctions with Dale End and Albert Street.
New Meeting Street	Construct disabled parking bays between LB07 and LB08 on the south side of New Meeting Street.
New Meeting Street	Construct disabled parking bays between LB09 and LB10 on the south side of New Meeting Street.
New Meeting Street	Construct bus layby between LB11 and LB12 on the north side of New Meeting Street.
New Meeting Street	Construct bus layby between LB13 and LB14 on the south side of New Meeting Street.
Albert Street	Realign the street between RS15 and RS16 to accommodate the new tracks, tram stop and the revised junction layout with Moor Street Queensway (B4100).
Albert Street	Widen the street between WS13 and WS14 to accommodate the new tracks, tram stop and the revised junction layout with Moor Street Queensway (B4100).
Albert Street	Widen the street from Albert Street to Moor Street Queensway between WS15 and WS16 to accommodate the new tracks, tram stop and the revised junction layout with Moor Street Queensway (B4100).
Moor Street Queensway (B4100)	Realign the street between RS17 to RS18 to accommodate the revised junction with Albert Street.
Moor Street Queensway (B4100)	Realign the street between RS19 to RS20 to accommodate the revised junction with Albert Street.

(1) <i>Streets subject to alteration of layout</i>	(2) <i>Description of alteration</i>
Digbeth	Widen the street between WS43 and WS44 to accommodate the revised junction with Meriden Street.
Digbeth	Realign the street between RS49 to RS50 to accommodate new tracks and the revised junctions with Meriden Street, Mill Lane, Oxford Street and Rea Street.
Digbeth	Widen the street between WS45 and WS46 to accommodate the new track and the revised junction with Mill Lane.
Digbeth	Widen the street between WS47 and WS48 to accommodate the new track and the revised junction with Oxford Street.
Mill Lane	Realign the street between RS51 to RS52 to accommodate the revised junction with High Street Deritend.
Oxford Street	Realign the street between RS53 to RS54 to accommodate the revised junction with High Street Deritend.
Digbeth	Widen the street between WS49 and WS50 to accommodate the new track and the revised junction with Mill Lane and the revised junction with Rea Street.
Digbeth	Widen the street between WS51 and WS52 to accommodate the new track and the revised junction with Oxford Street and the revised junction with Milk Street.
Rea Street	Realign the street between RS55 to RS56 to accommodate the revised junction with High Street Deritend.
Milk Street	Realign the street between RS57 to RS58 to accommodate the revised junction with High Street Deritend.
High Street Deritend	Widen the street between WS53 and WS54 to accommodate the new track and the revised junction with Rea Street.
High Street Deritend	Narrow the street between NS05 and NS06 to remove the existing layby and accommodate new track.
High Street Deritend	Widen the street between WS55 and WS56 to accommodate the new track and the revised junction with Stone Yard.
High Street Deritend	Widen the street between WS57 and WS58 to accommodate the new track, a tram stop, the revised junction with Milk Street and the revised junction with Floodgate Street.
Floodgate Street	Realign the street between RS59 to RS60 to accommodate the revised junction with High Street Deritend.

(1) <i>Streets subject to alteration of layout</i>	(2) <i>Description of alteration</i>
High Street Deritend	Widen the street between WS71 and WS72 to accommodate the revised highway layout and the junction with Alcester Street.
High Street Deritend	Narrow the street between NS09 and NS10 to remove the existing layby and accommodate the new tracks.

SCHEDULE 3

Article 13

STREETS TO BE STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
City of Birmingham	Albert Street	ST01 to ST02 between its junction with Dale End and New Meeting Street.	New section of street created by widening New Meeting Street between the junction of Bull Street/Dale End/High Street and the existing New Meeting Street.
	Park Street	ST03 to ST04 at its junction with Fazeley Street in a northerly direction for a distance of 30 metres.	New section of street created by widening the retained Park Street between Masshouse Lane and Albert Street, looping back to Masshouse Lane.

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
City of Birmingham	Seymour Street	ST05 to ST06 between its junction with Park Street and the car park (west of junction).
	New Canal Street	ST07 to ST08 at its junction with Banbury Street in a southerly direction for a distance of 30 metres.

SCHEDULE 4

Article 14

STREETS TO BE TEMPORARILY STOPPED UP

In the City of Birmingham—

<i>(1)</i> <i>Street affected</i>	<i>(2)</i> <i>Extent of stopping up</i>
Bull Street	Between its junction with the Birmingham city centre extension and Dale End/High Street.
Corporation Street	At its junction with Bull Street.
Dale End	At its junction with Bull Street.
High Street	At its junction with Bull Street.
Albert Street	Between its junction with Dale End and Moor Street Queensway (B4100).
New Meeting Street	At its junction with Albert Street.
Moor Street Queensway (B4100)	Between its junction with Albert Street and Masshouse Lane.
Albert Street	Between its junction with Moor Street Queensway and Park Street (B4114).
Park Street (B4114)	Between its junction with Fazeley Street and Masshouse Lane.
Fazeley Street	Between its junction with Park Street and New Canal Street.
New Canal Street	Between its junction with Banbury Street and Bordesley Street.
New Bartholomew Street	At its junction with Fazeley Street.
Bordesley Street	At its junction with New Canal Street.
Meriden Street	Between its junction with Bordesley Street and High Street Deritend (B4100).
Coventry Street	At its junction with Meriden Street.
High Street Deritend (B4100)	Between its junction with Allison Street and Adderley Street.
Mill Lane	At its junction with High Street Deritend.

<i>(1)</i> <i>Street affected</i>	<i>(2)</i> <i>Extent of stopping up</i>
Oxford Street	At its junction with High Street Deritend.
Rea Street	At its junction with High Street Deritend.
Milk Street	At its junction with High Street Deritend.
Floodgate Street	At its junction with High Street Deritend.
Stone Yard	At its junction with High Street Deritend.
Chapel House Street	At its junction with High Street Deritend.
Gibb Street	At its junction with High Street Deritend.
Heath Mill Lane	At its junction with High Street Deritend.
Alcester Street	At its junction with High Street Deritend.
Adderley Street	At its junction with High Street Deritend.

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory.
2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.
4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—
 - (a) withdraw the notice to treat,
 - (b) accept the counter-notice, or
 - (c) refer the counter-notice to the Upper Tribunal.
6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).
7. If the acquiring authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.
8. If the acquiring authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.
9. If the acquiring authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—
 - (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
 - (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.
11. In making its determination, the Upper Tribunal must take into account—
 - (a) the effect of the acquisition of the right,
 - (b) the proposed use of the right, and
 - (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 7

Article 34

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

In the City of Birmingham—

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on works boundary</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
Albert Street	17	Stopping up existing highway and replacing with landscaped area.	Work No. 1
Albert Street	18	Stopping up existing highway and replacing with landscaped area.	Work No. 1
Albert Street	28	Construction compound.	Work No. 1
Albert Street	27	Highway works alterations to car park access.	Work No. 1
Eastside Park	50	Temporary construction area.	Work No. 2
New Canal Street	59	Construction compound.	Work No. 3
New Canal Street	60	Construction compound.	Work No. 3
New Canal Street	63	Temporary construction area.	Work No. 3
Meriden Street	74	Temporary construction area.	Work No. 3
Meriden Street	76	Temporary construction area (building alteration).	Work No. 3
Meriden Street	77	Temporary construction area (building alteration).	Work No. 3
Meriden Street	78	Temporary construction area (demolition).	Work No. 3
High Street Deritend	84	Temporary construction area.	Work No. 4
High Street Deritend	86	Temporary construction area.	Work No. 4
Adderley Street	93	Construction compound.	Work No. 4

<i>(1) No.</i>	<i>(2) Road</i>	<i>(3) Extent</i>	<i>(4) Notes</i>
2.6	Albert Street	On both the north and south side of the street between the junction with New Meeting Street and Moor Street Queensway (B4100).	
2.7	Moor Street Queensway (B4100)	On both the east and west side of the street, starting 20 metres to the south of the existing junction with Albert Street for a distance of 140 metres north along the street.	Relocating 3 bus stands located on the west side of the street, to the north of the junction with Albert Street. Remove bus stand on the east side of the street.
2.8	Albert Street	On both the north and south side of the street between the junction with Moor Street Queensway and the junction with Park Street.	
2.9	Park Street	On both the north and south side of the street from between the junction with Albert Street and the junction with Masshouse Lane.	
2.10	Masshouse Lane	On both the north and south side of the street starting 40 metres east of the junction of Masshouse Lane and Moor Street Queensway to the junction with Park Street.	
2.11	Fazeley Street	On the north side of the street for a distance of 15 metres north from the junction of New Canal Street and Fazeley Street.	
2.12	New Bartholemew Street	On both the north and south side of the street for a distance of 5 metres from its junction with Fazeley Street.	
2.13	New Canal Street	On both the east and west side of the street between the junction with Fazeley Street and the junction with Bordesley Street.	
2.14	Bordesley Street	On the north side of the street for a distance of 20 metres east of the junction of New Canal Street/Meriden Street.	

PART 3

PROHIBITION OF VEHICULAR TRAFFIC

In the City of Birmingham—

Table 9

Prohibition of Driving

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
9.1	Bull Street	Prohibition 24 hours except tramcars, pedal cycles, access to off-street areas, access to onstreet loading from its junction with Temple Row to its junction with Corporation Street.	
9.2	Corporation Street	Prohibition 24 hours except tramcars, pedal cycles, access to off-street areas, access to onstreet loading, access from Burlington/Britannia Hotels, access from Stephenson Street drop off point from its junction with Stephenson Place to its junction with Bull Street.	
9.3	Bull Street	Prohibition 24 hours except tramcars, buses and pedal cycles from its junction with Dale End/High Street in a northerly direction to its junction with Corporation Street.	
9.4	Albert Street	Prohibition 24 hours except buses.	
9.5	Albert Street	Prohibition 24 hours except tramcars.	
9.6	Park Street	Prohibition 24hrs except tramcars.	
9.7	New Canal Street	Prohibition 24 hours except tramcars from its junction with Fazeley Street, north for a distance of 65 metres.	

Table 11**No Overtaking**

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
11.1	New Canal Street	No overtaking in both directions from its junction with Fazeley Street to its junction with Bordesley Street.	
11.2	Meriden Street	No overtaking in both directions from its junction with Bordesley Street to its junction with Coventry Street.	

PART 4**PEDAL CYCLE MOVEMENTS**

In the City of Birmingham—

Table 12**Contraflow Cycle Lane**

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
12.1	Corporation Street	Contraflow cycle lane in southbound direction on Corporation Street from its junction with Old Square to its junction with Bull Street.	

Table 13**Reserved Cycle Lane**

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
13.1	Bull Street	Reserved cycle lane from its junction with Corporation Street to its junction with Dale End/High Street.	
13.2	New Meeting Street	Reserved cycle lane along length of street.	

Table 16**Loading Bay**

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
16.1	Park Street	On the north side of the street 40 metres from the junction of Park Street and Masshouse Lane for a distance of 25 metres.	Loading bay for Hotel LaTour passenger drop off.

Table 17**Pay and Display Parking Bays between 8:00am and 7:30pm**

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
17.1	New Bartholomew Street	On both the north and south side of the street from 5 metres from its junction with Fazeley Street for a distance of 15 metres.	Maximum stay 4 hours.

“electronic communications code network” means an electronic communications network within the meaning of the Communications Act 2003 to which the electronic communications code applies; and

“public utility undertakers” has the same meaning as in the 1980 Act (a).

Apparatus of statutory undertakers, etc, in stopped up streets

2.—(1) Where a street is stopped up under article 13 (stopping up of streets) any statutory utility whose apparatus is under, in, upon, over, along or across the street has the same powers and rights in respect of that apparatus, subject to the provision of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, upon, over, along or across the street may where reasonably necessary for the efficient operation of the undertaking of the statutory utility or, if reasonably requested to do so by the Authority, must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in that other position.

(3) Subject to the following provisions of this paragraph, the Authority must pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of relocation works.

(4) If in the course of the execution of relocation works under sub-paragraph (2)—

- (a) apparatus of better type, of greater capacity or of greater dimension is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Authority, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) will be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) must, if the works include the placing of apparatus provided in substitution for

(a) 1980 c. 66.

apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraph (6) does not apply to apparatus being substituted which comprises cathode protected steel mains and any other apparatus which is agreed between the Authority and the statutory utility as not being required to be replaced imminently.

(8) Sub-paragraphs (3) to (6) do not apply where—

- (a) the authorised works constitute major transport works or major highway works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act (including that Part as applied by article 5 (application of the 1991 Act)); and
- (b) any relocation works carried out under paragraph (2) include replacement apparatus being placed in a street,

but instead—

- (i) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of costs of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (ii) the allowable costs are to be borne by the Authority and the statutory utility in such proportions as may be prescribed by any such regulations.

(9) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means works executed, or apparatus provided, under sub-paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or an operator of an electronic communications code network as defined in paragraph 1(6).

Application of electronic communications code

3.—(1) Part 6 of the electronic communications code does not apply for the purposes of the authorised works to the extent that such works are regulated by Part 11 of the 1990 Act, sections 84 and 85 of the 1991 Act (or regulations made under section 85 of that Act), paragraph 2 or sub-paragraph (3).

(2) Part 10 of the electronic communications code applies for the purposes of the authorised works, except—

- (a) in so far as such works are regulated by the 1991 Act or any regulation made under that Act; or
- (b) where the Authority exercises a right under subsection (4)(b) of section 272 of the 1990 Act or under an order made under that section to remove apparatus.

(3) The temporary stopping up, alteration or diversion of any highway under article 14 (temporary stopping up of streets) does not affect any the code rights of an operator of an electronic communications code network in respect of any apparatus which at the time of the stopping up or diversion is in the highway.

(4) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“code rights” means those rights set out in paragraph 3 of the electronic communications code; and

“electronic communications code” and “electronic communications code network” have the same meaning as in paragraph 1(6).

- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

4.—(1) The Authority must not exercise the powers conferred by article 23 (power to survey and investigate land, etc.) and article 28 (power to acquire land) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Authority must not in exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The Authority must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic code communications operators: preliminary notices)(a) of the 1990 Act as applied by Schedule 9 (provisions relating to statutory undertakers) in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The Authority must not under the powers conferred by this Order acquire or use, or acquire new rights over, any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The Authority must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the Authority may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the Authority. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is to be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the Authority that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Authority desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the Authority in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the Authority for an agreed cost.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the Authority, if Network Rail so desires, and such protective works are to be carried out at the expense of the Authority in either case without unnecessary delay and the Authority must not commence the construction of the specified works until the engineer has notified the Authority that the protective works have been completed to the engineer's reasonable satisfaction.

(a) Section 272 was amended by paragraph 103 of Schedule 17 to the Communications Act 2003 (c. 21).

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the Authority must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule imposes any liability on the Authority with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the Authority or its servants, contractors or agents.

7. The Authority must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the Authority and its agents for access to any works carried out by Network Rail under this Schedule during their construction and must supply the Authority with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Authority reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Authority must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Authority, Network Rail gives notice to the Authority that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Authority decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the Authority must, regardless of any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a), provide such details of the formula by which those sums have been calculated as the Authority may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the Authority to Network Rail under this paragraph.

10. The Authority must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the Authority as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the Authority and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised works giving rise to EMI (unless the Authority has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the Authority must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Authority’s compliance with sub-paragraph (3)—

- (a) the Authority must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the Authority all information in the possession of Network Rail reasonably requested by the Authority in respect of Network Rail’s apparatus identified under sub-paragraph (a); and
- (c) Network Rail must allow the Authority reasonable facilities for the inspection of Network Rail’s apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the Authority must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the Authority's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the Authority must afford reasonable facilities to Network Rail for access to the Authority's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the Authority for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the Authority any additional material information in its possession reasonably requested by the Authority in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus under subparagraphs (5) or (6)—

- (a) Network Rail must allow the Authority reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the Authority in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity referred to in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph is to be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 53 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Electrical Engineers.

12.—(1) If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the Authority informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the Authority must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

(2) If at any time after the completion of a specified work, being a work vested in Network Rail, the Authority gives notice to Network Rail informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of the authorised tramway Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect the authorised tramway.

13. The Authority must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Authority, be repaid by the Authority to Network Rail.

15.—(1) The Authority must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure of such a work; or
- (b) by reason of any act or omission of the Authority or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the Authority must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the Authority or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the Authority from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the Authority reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the Authority.

(3) The sums payable by the Authority under sub-paragraph (1) include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums are payable to that operator under sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the Authority, from time to time provide the Authority free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Authority is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the Authority to assess the reasonableness of any such estimate or claim made or to be made under this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule no account is to be taken of any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Authority under this Schedule or increasing the sums so payable.

18. The Authority and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the Authority of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

20. The Authority must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 51 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

SCHEDULE 11

Article 56

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions of this Schedule, unless otherwise agreed in writing between the Authority and the Agency, have effect.

(2) In this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work; or

(b) affect the flow, purity or quality of water in any watercourse or ground water; and

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

2.—(1) Before beginning to construct any specified work, the Authority must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 11.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3. Without limitation on the scope of paragraph 2, the requirements which the Agency may make under that paragraph include conditions requiring the Authority at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Agency may make good the impairment or damage and recover from the Authority the expense reasonably incurred by it in doing so.

7. Nothing in paragraphs 4(4), 5(3) and 6 authorises the Agency to execute works on or affecting the authorised works.

8. The Authority must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule.

9.—(1) Without affecting the other provisions of this Schedule, the Authority must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (c) any flooding or increased flooding of any such lands; or
- (d) inadequate water quality in any watercourse or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the Authority, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency must give to the Authority reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the Authority which agreement must not be unreasonably withheld or delayed.

10. The fact that any work or thing has been executed or done by the Authority in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Authority from any liability under the provisions of this Schedule.

11. Any dispute arising between the Authority and the Agency under this Schedule, if the parties agree, is to be determined by arbitration under article 53 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the Authority or the Agency, after notice in writing by one to the other.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the West Midlands Combined Authority to construct, operate and maintain an extension to the Midland Metro tramway system in Birmingham city centre from the junction of Bull Street and Corporation Street, running east along Lower Bull Street and into Albert Street, across Moor Street Queensway, continuing south under the proposed new High Speed 2 station at Curzon Street and along New Canal Street and Meriden Street, before continuing east along High Street Deritend where the system terminates west of Heath Mill Lane.

The Order authorises the compulsory acquisition and the temporary use of land for the purposes of the works and confers other powers in connection with the construction, operation and maintenance of the works.

A copy of the works and land plans, the traffic regulation plans and the book of reference mentioned in the Order and certified in accordance with article 51 (certification of plans, etc.) may be inspected free of charge during normal working hours at the offices of West Midlands Combined Authority at 16 Summer Lane, Birmingham, B19 3SD.

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