

201[●] No.

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Midland Metro (Birmingham Eastside Extension) Order
201[●]

Made - - - - - ***

Coming into force - - - - - ***

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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The Secretary of State[, having considered the objections made and not withdrawn and the report of the person who held the inquiry,] has determined to make an Order giving effect to the proposals comprised in the application with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.

Notice of the Secretary of State’s determination was published in the London Gazette on [] 201[●].

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- (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 and S.I. 2013/755.
(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.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 13 and 15 to 17 of Schedule 1 to the 1992 Act, makes the following Order—

PART 1 PRELIMINARY

Citation and commencement

1. This Order may be cited as the Midland Metro (Birmingham Eastside Extension) Order 201[●] and comes into force on [] 201[●].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

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

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

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

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

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

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

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

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

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

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

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

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

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

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

“electric line” has the meaning given by section 64(1) of the Electricity Act 1989(j);

“electronic transmission” means a communication transmitted—

(a) 1961 c. 33.

(b) 1965 c. 56.

(c) 1980 c. 66.

(d) 1984 c. 27.

(e) 1989 c. xv.

(f) 1990 c. 8.

(g) 1991 c. 22. As amended by the Traffic Management Act 2004 c. 18.

(h) S.I. 2005/1794.

(i) S.I. 2016/653.

(j) 1989 c. 29.

(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 7(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(a);

“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 deviation and 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;

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

“the works and land plans” means the plans and sections certified by the Secretary of State as the works and land plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in or under or on land or in the air space over its surface.

(a) 1981 c. 67.

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

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

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

Incorporation of the Railways Clauses Consolidation Act 1845

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

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

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

- “the company” means the Authority;
- “goods” includes any thing conveyed on the authorised tramway;
- “lease” includes an agreement for a lease;
- “prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;
- “the railway” means the authorised tramway, together with any authorised works ancillary to the authorised tramway;
- “the special Act” means this Order; and
- “toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any authorised tramway to be constructed under this Order.

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

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

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

(a) 1845 c. 20.

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

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

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

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

Application of the Midland Metro Acts

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

- (a) the purposes of the following provisions of the 1989 Act—
 - section 3(3) (incorporation and application of enactments relating to railway);
 - section 16 (agreements with British Railways Board);
 - section 17 (transport consultative committee);
 - section 25 (provisions as to use of electrical energy);
 - section 46 (power to lop trees overhanging railway);
 - section 47 (removal of obstructions);
 - section 48 (for better prevention of trespass on railways);
 - section 49 (byelaws relating to metro);
 - section 50 (modification of railway regulation enactments);
 - section 51 (carriages on metro deemed public services vehicles);
 - section 52 (power to contract for police); and
 - section 54 (powers of disposal, agreements for operation, etc.); and
- (b) the purposes of section 18 (application of landlord and tenant law to metro leases) of the (No. 2) 1992 Act,

but it is not to be so treated for—

- (i) the purposes of the following provisions of the 1989 Act—
 - section 5(4) and (5) (application of provisions of Public Utilities Street Works Act 1950 and Road Traffic Regulation Act 1984);
 - section 15 (gauges of railways and restrictions on working);
 - section 24 (attachment of brackets, etc., to buildings for purposes of works);
 - section 44 (insulation against noise); and
 - section 45 (orders for insulating new buildings); and
- (ii) section 24 (authorisation of new level crossings) of the 1992 Act.

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

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

- (a) references to the railways board in section 16 (agreements with British Railways Board) and section 17 (transport consultative committee) of the 1989 Act are to be treated as references to a person holding a licence under section 8 (licences) of the 1993 Act or a person exempt, by virtue of section 7 (exemptions from section 6) of the 1993 Act, from the requirement to be authorised by such a licence;

(a) 1991 c. ii.

- (b) the reference to section 56 (the Transport Consultative Committee) 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 “as if” until the end of that subsection substitute the words “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 the 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 (vehicle crossings) of that Act.

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

(3) The provisions of the 1991 Act mentioned in paragraph (4) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under those provisions, apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the Authority under the powers conferred by article 13 (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) 1962 c. 46.
 (b) 2005 c. 14.
 (c) 1992 c. vii.
 (d) 1993 c. 34.
 (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).

section 54(b) (advance notice of certain works), subject to paragraph (5);
section 55(c) (notice of starting date of works), subject to paragraph (5);
section 57(d) (notice of emergency works);
section 59(e) (general duty of street authority to co-ordinate works);
section 60 (general duty of undertakers to co-operate);
section 68 (facilities to be afforded to street authority);
section 69 (works likely to affect other apparatus in the street);
section 76 (liability for cost of temporary traffic regulation); and
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 15 (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.

PART 2 WORKS PROVISIONS

Principal powers

Power to construct and maintain works

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

(2) Subject to article 7 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land plans and in accordance with the levels shown on the sections.

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

- (a) stations, platforms and tram stops;
- (b) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised tramway;
- (c) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (d) works for the strengthening, alteration or demolition of any building;

(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 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.

- (e) works to any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (f) works to alter the course of, or otherwise interfere with, watercourses;
- (g) landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works; and
- (h) facilities and works for the benefit or protection of land or premises affected by the other authorised works.

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

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

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

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

- (a) within the Order limits; or
- (b) within the boundaries of any street.

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

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

- (a) regulation 12(1)(a) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010^(a) in relation to the carrying on of a relevant flood risk activity;
- (b) section 23 (prohibition on obstructions etc in watercourses) of the Land Drainage Act 1991^(b);
- (c) any byelaws made under that Act or the Water Resources Act 1991^(c); and
- (d) the provisions of the Neighbourhood Planning Act 2017^(d) insofar as they relate to the temporary possession of land under articles ~~34-33~~ and ~~35-34~~ of this Order.

(10) In paragraph (9)(a) “relevant flood risk activity” means anything done under or in pursuance of this Order within paragraph 3(1)(a), (b) or (c) of Schedule 23ZA (flood risk activities and excluded flood risk activities) to the Environmental Permitting (England and Wales) Regulations 2010.

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

Power to deviate

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

(a) S.I. 2010/675 as amended by the Environmental Permitting (England and Wales) Amendment (No. 2) Regulations 2016 (S.I. 2016/475).
 (b) 1991 c. 59.
 (c) 1991 c. 57.
 (d) 2017 c. [].

- (a) deviate laterally from the lines or situations shown on the works and land plans within the limits of deviation relating to that work shown on those plans; and
 - (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent not exceeding 3 metres upwards; and
 - (ii) to any extent downwards as may be necessary or expedient.
- (2) In constructing or maintaining any work or part of a work shown on the works and land plans as being situated in a street and for which no limits of deviation are shown on those plans, the Authority may deviate laterally within the boundaries of that street.
- (3) The Authority may, in constructing or maintaining the scheduled works, lay down—
- (a) double lines of rails in place of single lines;
 - (b) single lines of rails in place of double lines;
 - (c) interlacing lines of rails in place of double or single lines; or
 - (d) double or single lines of rails in place of interlacing lines.
- (4) The powers conferred by paragraph (3) must not be exercised in the case of any part of the authorised street tramway without the consent of the street authority, but such consent must not be unreasonably withheld.

Designation of works

- 8.**—(1) Regardless of anything in the description of the scheduled works the whole or any part of the scheduled works may be constructed within the limits of deviation for that work either along a street as a street tramway or off-street as a tramroad and so far as it is so constructed it is to be treated for the purposes of this Order as if it were so designated.
- (2) Where, by means of the creation or extinction of rights of way—
- (a) any part of the authorised tramway which has been constructed as a tramroad becomes a street tramway, it is to be treated for the purposes of this Order as if it were designated as a street tramway; and
 - (b) any part of the authorised tramway which has been constructed as a street tramway becomes a tramroad, it is to be treated for the purposes of this Order as if it were designated as a tramroad.

Streets

Power to alter layout, etc., of streets

- 9.**—(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 6 (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

10.—(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 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.

Power to execute street works

11.—(1) The Authority may, for the purpose of exercising the powers conferred by article 10 (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 without the consent of the street authority, but such consent must not be unreasonably withheld.

Stopping up of streets

12.—(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 mentioned in column (1) of Schedule 3 (streets to be permanently stopped up) to the extent specified, by reference to the letters shown on the works and land plans, in column (2) of that Schedule.

(2) No street specified in column (1) of Schedule 3 is to be wholly or partly stopped up under this article where a new street is specified to be substituted for it in column (3) of that Schedule until the date of practical completion of that new street and the new street is open for use.

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

(a) S.I. 1999/1026.

(4) No part of a street specified in columns (1) to (2) of Schedule 3 where no new street is to be substituted for it in column (3) can be stopped up under this article unless all the land which abuts it falls within one or more of the following categories, namely—

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

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

- (a) all rights of way over or along the street so stopped up 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 I of the Land Compensation Act 1961.

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

Temporary stopping up of streets

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

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

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

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

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

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

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

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

Access to works

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

Construction and maintenance of new, altered or diverted highways

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

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

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge carrying a highway over a tramroad of the Authority or carrying a tramroad of the Authority over a highway and except as provided in those paragraphs the Authority is not liable to maintain the surface of any highway in, on, under or over which the scheduled works are constructed, or the immediate approaches to any such highway, unless otherwise agreed with the highway authority.

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

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

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

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

Restoration of streets if street tramway discontinued

16. 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

- 17.**—(1) A street authority and the Authority may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under a tramroad) 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 11 (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

18.—(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.

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

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

(4) Without limitation on the scope of article 9 (power to alter layout, etc., of streets), the Authority may in the exercise of the powers conferred by this article alter the level of any highway or road referred to in paragraph (1).

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

(6) In this article—

“level crossing” means the place at which the authorised tramroad crosses a highway or other road on the level under the powers conferred by this article; and

“protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

Supplemental powers

Attachment of equipment to buildings

19.—(1) The Authority may affix to any building constructed at any time within the permanent limits—

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

Discharge of water

20.—(1) The Authority may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, or in any street along which the authorised tramway is authorised to be laid, make openings into, and connections with, the watercourse, sewer or drain.

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

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

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

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

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

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

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

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

(8) In this article—

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

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

Works to safeguard buildings and the operation of the authorised tramway

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

(2) Safeguarding works may be carried out—

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

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

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

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

(a) 1991 c. 56.

(b) S.I. 2010/675.

(c) 1991 c. 57.

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

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

(6) Where notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article ~~53~~52 (arbitration).

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

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

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

(9) Without affecting article ~~38~~37 (no double recovery), nothing in this article relieves the Authority from any liability to pay compensation under section 10(2)(a) (further provision as to injurious affection) of the 1965 Act.

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

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

Power to survey and investigate land, etc.

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

(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.

- (a) survey or investigate any land within the Order limits, any street along which the authorised street tramway is authorised to be laid and any street having a junction with such a street;
 - (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the Authority thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without limitation on the scope of sub-paragraph (a), carry out archaeological investigations on any such land;
 - (d) take steps to protect or remove any flora or fauna on the land where the flora or fauna may be affected by the carrying out of the authorised works;
 - (e) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (d); and
 - (f) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (e).
- (2) No land may be entered, or equipment placed or left on or removed from the land, under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) 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; and
 - (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.
- (4) 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.
- (5) 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.
- (6) 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

- 23.**—(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

(a) 1979 c. 46.

works to any street surfaces and works affecting any equipment or apparatus placed in the street under article 10 (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

24. 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

25.—(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 9(2) (power to alter layout, etc., of streets), 10 (power to keep apparatus in streets), 11 (power to execute street works) and ~~43~~42 (traffic signs) apply in relation to temporary tramways laid under the powers conferred by this article as they apply in relation to authorised street tramways.

Removal of human remains

26.—(1) In this article, “the specified land” means the land within the Order limits.

(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 reinterred 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 reinterred 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.

(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.

PART 3
ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

27.—(1) The Authority may acquire compulsorily so much of the land shown on the works and land plans as lying within the permanent limits 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 31 (new rights only to be acquired in certain lands).

[\(3\) This article does not apply to the land numbered 43, 47, 47A and 48 on the works and land plans.](#)

Application of Part 1 of the 1965 Act

28.—(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(a) applies; and

(b) as if this Order were a compulsory purchase order under that Act.

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

(3) Omit Section 4 (time limit for compulsory purchase of land).

(4) In section 4A(1) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)”; and

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article ~~40-39~~ of the Midland Metro (Birmingham Eastside Extension) Order 201[X]”.

(5) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article ~~40-39~~ of the Midland Metro (Birmingham Eastside Extension) Order 201[X]”.

(6) In Schedule 2A (proposals to acquire part only of a house, building or factory)—

(a) omit paragraphs 1(2) and 14(2); and

(b) at the end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article ~~34-33~~ of the Midland Metro (Birmingham Eastside Extension) Order 201[X] (temporary use of land for construction of works).”

(a) 1981 c. 67.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

29.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) Omit section 5 (earliest date for execution of declaration).

(4) Omit section 5A (time limit for general vesting declaration).

(5) In section 5B (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)”; and

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article ~~40-39~~ of the Midland Metro (Birmingham Eastside Extension) Order 201[X]”.

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

(7) In section 7 (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 (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 by article 28 (application of Part 1 of the 1965 Act).

Powers to acquire new rights

30.—(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) Subject to—

(a) Schedule 2A to the 1965 Act (as substituted by paragraph 2(8) of Schedule 14 (application of compulsory purchase legislation)); and

(b) Schedule A1 to the 1981 Act (as modified by paragraph 4(7) of that Schedule),

where the Authority acquires a right under paragraph (1) the Authority is not required to acquire a greater interest in that land.

(3) 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.

[\(4\) This article does not apply to the land numbered 43, 47, 47A and 48 on the works and land plans.](#)

New rights only to be acquired in certain lands

31. In the case of land specified in Schedule 6 (acquisition of new rights only) the Authority’s powers of compulsory acquisition under article 27 (power to acquire land) and article 30 (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) 1981 c. 66.

- (a) exercising the powers conferred by article 19 (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

32.—(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) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the Authority being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the Authority acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation, the amount of such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) Paragraph (2) does not apply in relation to—

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

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker, to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies, in respect of measures of which the allowable costs are to be borne in accordance with that section.

Special category land

~~**33.**—(6) Upon entry by the Authority onto the special category land under article 27 (power to acquire land) or article 30 (powers to acquire new rights), so much of the special category land as is required for the purposes of the exercise by the Authority of the order rights is discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(1) In this article—~~

~~“the order rights” means rights exercisable over the special category land by the Authority under article 27 (power to acquire land) or article 30 (powers to acquire new rights) but being subject to article 31 (new rights only to be acquired in certain lands); and~~

~~“the special category land” means the land identified as open space and numbered 43, 47 and 48 on the works and land plans.~~

Temporary possession of land

Temporary use of land for construction of works

~~**33,34.**—~~**34.**—(1) The Authority may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of—
 - (i) so much of the land shown on the works and land plans as lying within the temporary limits for the purpose specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken) relating to the scheduled works specified in column (4) of that Schedule; and

- (ii) any of the land within the permanent limits in respect of which no notice of entry has been served under section 11(a) (powers of entry) of the 1965 Act or no declaration has been made under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;
 - (b) remove any buildings and vegetation from that land;
 - (c) construct temporary works (including the provision of means of access) and buildings on that land; and
 - (d) construct any of the authorised works on that land.
- (2) Not less than 14 days before exercising the powers of paragraph (1) the Authority must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The Authority may not, without the agreement of the owners of the land, remain in possession of any land of which temporary possession has been taken under this article—
- (a) in the case of land lying within the temporary limits, after the end of the period of 2 years beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 7; or
 - (b) in the case of land within the permanent limits, after the end of the period of 2 years beginning with the date of completion of the work for which temporary possession of the land was taken unless the Authority has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 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~~37 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(b) (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(c) (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 28(1) (application of Part 1 of the 1965 Act).

Temporary use of land for maintenance of works

~~34, 35.~~ ~~35.~~ (1) Subject to paragraph (2), at any time during the maintenance period relating to the scheduled works, the Authority may—

-
- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.
 - (b) 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.
 - (c) 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).

- (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.
- (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.
- (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~~37 (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 28(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

~~35.36.~~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

~~36.37.—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 30 (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
- (b) 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.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

No double recovery

~~37.38.~~ Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Supplementary

Extinction or suspension of private rights of way

~~38.39.—39.—~~(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

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

whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by the Authority which is within the permanent limits and is required for the purposes of this Order, are extinguished on the appropriation of the land for any of those purposes by the Authority.

(3) Subject to the provisions of this article, all private rights of way over land of which the Authority takes temporary possession under this Order are suspended and unenforceable for as long as the Authority remains in lawful possession of the land.

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

(5) Paragraphs (1), (2) and (3) have effect subject to—

(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No 1) and S.I. 2009/1307.

- (a) any notice given by the Authority before the completion of the acquisition of the land, the Authority's appropriation of it, the Authority's entry onto it or the Authority's taking temporary possession of it, as the case may be, that any or all of those paragraphs do not apply to any right of way specified in the notice; and
 - (b) any agreement made (whether before or after any of the events mentioned in subparagraph (a) and before or after the coming into force of this Order) between the Authority and the person in or to whom the right of way in question is vested or belongs.
- (6) If any such agreement as is referred to in paragraph (5)(b) which is made with a person in or to whom the right of way is vested or belongs is expressed to have effect also for the benefit of those deriving title from or under that person, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Time limit for exercise of powers of acquisition

~~39.40.—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 28 (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 29 (application of Compulsory Purchase (Vesting Declarations) Act 1981).
- (2) The power conferred by article ~~34—33~~ (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—33~~ 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

~~40.41.—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

~~41.42.~~ 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

~~42.43.—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~~43 (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
- (b) unless the traffic authority is unwilling to do so and subject to any directions given under section 65 (powers and duties of highway authorities as to placing of traffic signs)^(a) of the 1984 Act, must enter into arrangements with the traffic authority for any such signs other than traffic light signals to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs includes a power to give directions to the Authority as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) are exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on any street in which the authorised street tramway is laid or which gives access to such a street must consult with the Authority as to the placing of any traffic sign which would affect the operation of the authorised street tramway.

(5) Tramcars are taken to be public service vehicles for the purposes of section 122(2)(c) (exercise of functions by local authorities) of the 1984 Act.

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

Traffic regulation

~~43.44.—44.—~~(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the Authority may, in connection with the construction or operation of the authorised tramway, at any time prior to the expiry of 12 months from the opening of the authorised tramway, and in accordance with the traffic regulation plans—

- (a) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles in the manner specified in Part 1 of Schedule 8 (traffic regulation) on those roads specified in column (2) and along the lengths and between the points specified in column (3) of that Part of that Schedule;
- (b) make provision as to the direction of vehicular traffic in the manner specified in Part 2 of Schedule 8 on the roads specified in column (2) and along the lengths, between the points and as respects direction to the extent specified in column (3) of that Part of that Schedule;

(a) As amended by section 153 of the Local Government and Housing Act 1989 (s. 42), section 168(1) of, and paragraph 48 of part 2 of Schedule 8 to, the 1991 Act and section 48 of, and paragraph 29 of Schedule 4 to, the Road Traffic Act 1991 (c. 40).

- (c) permit or prohibit vehicular access in the manner specified in Part 3 of Schedule 8 to those roads specified in column (2) and along the lengths, between the points and as respects direction to the extent specified in column (3) of that Part of that Schedule;
- (d) make provision as to pedal cycle movements in the manner specified in Part 4 of Schedule 8 on the roads specified in column (2) and along the lengths and between the points specified in column (3) to that Part of that Schedule;
- (e) make provision as to parking in the manner specified in Part 5 of Schedule 8 on the roads specified in column (2) and along the lengths and between the points specified in column (3) to that Part of that Schedule; and
- (f) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the Authority under this paragraph.

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road is situated, which consent must not be unreasonably withheld, the Authority may, in so far as 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 provision of paragraph (4).

(4) The Authority must not exercise the powers conferred by paragraphs (1) and (2) unless it has given not less than 12 weeks' notice in writing of its intention to do so to the chief officer of the police in whose area the road is situated.

(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

~~44.45.~~ 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.

~~45.46.~~ The provisions of Schedule 9 (provisions relating to statutory undertakers, etc.) have effect.

Minerals

~~46.47.~~ 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 person so entitled in respect of damage to the authorised street tramway resulting from the exercise of any such right.

Saving for highway authorities

~~47.48.~~ 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

~~48.49.~~ A person who—

- (a) enters a factory, workshop or workplace under article 21 (works to safeguard buildings and the operation of the authorised tramway) or article 22 (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

~~49.50.—50.—(1)~~ Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(b) in relation to a nuisance falling within paragraph (g) of section 79(1)(c) (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) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).
(b) 1990 c. 43.
(c) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, 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).

- (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(a) (prior consent for work on construction sites) of the Control of Pollution Act 1974(b); 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.

~~50.51.~~ 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 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

~~51.52. 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(c) 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

(a) 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).

(b) 1974 c. 40.

(c) 1978 c. 30.

- (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.

Arbitration

~~52.53.~~ Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Repeals of the 1989 Act

~~53.54.~~ Section 15(5) of the 1989 Act is repealed.

For protection of railway interests

~~54.55.~~ The provisions of Schedule 10 (for the protection of railway interests) have effect.

For protection of the Environment Agency

~~55.56.~~ The provisions of Schedule 11 (for the protection of the Environment Agency) have effect.

Signed by authority of the Secretary of State

Date

Name
Head of the Transport and Works Act Orders Unit
Department for Transport

SCHEDULES

SCHEDULE 1

Article 2(1)

SCHEDULED WORKS

In the City of Birmingham—

<i>(1)</i> <i>Number of Work</i>	<i>(2)</i> <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 approximately 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 Hotel LaTour and Masshouse Lane and highway alterations in front of the hotel including the construction of a new footway approximately 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.

<i>(1)</i> <i>Number of Work</i>	<i>(2)</i> <i>Description of Work</i>
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 9

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 BCCE 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 BCCE 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.

<i>(1)</i> <i>Streets subject to alteration of layout</i>	<i>(2)</i> <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.

<i>(1)</i> <i>Streets subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
Moor Street Queensway (B4100)	Construct a bus layby between LB15 and LB16 on the west side of Moor Street Queensway (B4100) to relocate the existing bus layby away from the junction of Albert Street and Moor Street Queensway (B4100).
Albert Street	Realign the street between RS21 and RS22 from Moor Street Queensway (B4100) to the junction with Park Street. To accommodate the new track alignment, road vehicles, buses and pedestrians. There will also be provisions for a bus layby on the southern side of the street.
Albert Street	Widen the street between WS17 and WS18 to accommodate the new tracks and the revised junction layout with Moor Street Queensway (B4100) and Masshouse Lane.
Albert Street	Widen the street between WS19 and WS20 to accommodate the new tracks, carriageway and the revised junction layout with Moor Street Queensway (B4100).
Park Street	Realign the street between RS23 to RS24 to accommodate the revised junction with Masshouse Lane.
Park Street	Widen the street between WS21 and WS22 to accommodate the new tracks and new junction layout with Masshouse Lane.
Park Street	Widen the street between WS23 and WS24 to accommodate the new tracks, carriageway and the revised junction layout with Masshouse Lane.
Masshouse Lane	Realign the street between RS25 to RS26 to accommodate the revised junction with Park Street.
Masshouse Lane	Widen the street between WS25 and WS26 to accommodate the revised junction with Park Street.
New Canal Street	Realign the street between RS27 and RS28 to accommodate the new track alignment.
New Canal Street	Widen the street between WS27 and WS28 to accommodate the new tracks and the revised junction layout with Fazeley Street.
New Canal Street	Widen the street between WS29 and WS30 to accommodate the new tracks and the revised junction layout with Fazeley Street.
New Bartholomew Street	Realign the street between RS29 to RS30 to accommodate the revised junction with New Canal Street.
Fazeley Street	Realign the street between RS31 to RS32 to accommodate the revised junction with New Canal Street.

<i>(1)</i> <i>Streets subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
New Canal Street	Realign the street between RS33 to RS34 to accommodate the new tracks, a tram stop and new footway.
New Canal Street	Narrow the street between NS01 and NS02 to accommodate a tram platform on the west side of New Canal Street between the junction with Fazeley Street and Bordesley Street.
New Canal Street	Widen the street between WS31 and WS32 to accommodate the new tracks and tram stop.
Bordesley Street	Realign the street between RS35 to RS36 to accommodate the revised junction with New Canal Street.
Bordesley Street	Realign the street between RS37 to RS38 to accommodate the revised junction with New Canal Street.
Meriden Street	Realign the street between RS39 to RS40 to accommodate the new track alignment.
Meriden Street	Widen the street between WS33 and WS34 to accommodate the new tracks alignment.
Meriden Street	Widen the street between WS35 and WS36 to accommodate the new tracks alignment.
Coventry Street	Realign the street between RS41 to RS42 to accommodate the revised junction with Meriden Street.
Coventry Street	Realign the street between RS43 to RS44 to accommodate the revised junction with Meriden Street.
Meriden Street	Realign the street between RS45 to RS46 to accommodate new tracks and the revised junction with Digbeth.
Meriden Street	Widen the street between WS37 and WS38 to accommodate the new tracks.
Meriden Street	Widen the street between WS39 and WS40 to accommodate the new tracks.
Meriden Street	Widen the street between WS41 and WS42 to accommodate the new tracks, the revised junction with Digbeth and a new footway.
Meriden Street	Narrow the street between NS03 and NS04 to accommodate the revised junction with Digbeth.
Digbeth	Realign the street between RS47 to RS48 to accommodate new tracks and the revised junction with Meriden Street.

<i>(1)</i> <i>Streets subject to alteration of layout</i>	<i>(2)</i> <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.

<i>(1)</i> <i>Streets subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
High Street Deritend	Realign the street between RS61 to RS62 to accommodate new tracks, a tram stop and the revised junctions with Milk Street, Floodgate Street, Stone Yard, Chapel House Street and Gibb Street.
High Street Deritend	Widen the street between WS59 and WS60 to accommodate the new track and the revised junction with Floodgate Street.
High Street Deritend	Narrow the street between NS07 and NS08 to remove the existing layby and accommodate new track.
High Street Deritend	Widen the street between WS61 and WS62 to accommodate the new track and the revised junction with Gibb Street.
Stone Yard	Realign the street between RS63 to RS64 to accommodate the revised junction with High Street Deritend.
High Street Deritend	Widen the street between WS63 and WS64 to accommodate the new tracks and the revised junctions with Stone Yard and Chapel House Street.
Chapel House Street	Realign the street between RS65 to RS66 to accommodate the revised junction with High Street Deritend.
High Street Deritend	Widen the street between WS65 and WS66 to accommodate the new tracks and the revised junctions with Chapel House Street and Alcester Street.
Gibb Street	Realign the street between RS67 to RS68 to accommodate the revised junction with High Street Deritend.
High Street Deritend	Widen the street between WS67 and WS68 to accommodate the new tracks and the revised junctions with Gibb Street and Heath Mill Lane.
Heath Mill Lane	Realign the street between RS69 to RS70 to accommodate the revised junction with High Street Deritend.
High Street Deritend	Realign the street between RS71 to RS72 to accommodate the new tracks and the revised junctions with Heath Mill Lane and Alcester Street.
High Street Deritend	Widen the street between WS69 and WS70 to accommodate the new tracks and the revised junction with Heath Mill Lane.
Alcester Street	Realign the street between RS73 to RS74 to accommodate the revised junction with High Street Deritend.
High Street Deritend	Realign the street between RS75 to RS76 to accommodate the revised highway layout.

<i>(1)</i> <i>Streets subject to alteration of layout</i>	<i>(2)</i> <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 12

STREETS TO BE PERMANENTLY STOPPED UP

In the City of Birmingham—

<i>(1)</i> <i>Street affected</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>New street to be substituted</i>
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.
Seymour Street	ST05 to ST06 between its junction with Park Street and the car park (west of junction).	No new street will be provided.
New Canal Street	ST07 to ST08 at its junction with Banbury Street in a southerly direction for a distance of 30 metres.	No new street will be provided.

SCHEDULE 4

Article 13

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.

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973^(a) has effect subject to the modifications set out in sub-paragraphs (2) and **Error! Reference source not found.**

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

- (a) for the words “land is acquired or taken” substitute “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act;
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 5 to the Midland Metro (Birmingham Eastside Extension) Order 201[X]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

Application of the 1965 Act

4.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

(a) 1973 c. 26.

5. For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(d) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

10. For Schedule 2A to the 1965 Act substitute—

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.
 - (b) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (c) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (d) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

“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, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) in respect of the land to which the notice to treat relates.

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 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 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 authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the 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 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 or the imposition of the restrictive covenant 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 or the imposition of the covenant,

- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed 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 or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the 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 authority ought to be required to take some or all of the house, building or factory, the 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.”

Compulsory Purchase (Vesting Declarations) Act 1981

11. The 1981 Act, as applied by article 29 to the acquisition of land under article 29(1), applies to a compulsory acquisition of a right under article 30—

- (a) with the modifications specified in paragraph 12; and
- (b) with such other modifications as may be necessary.

12.—(1) The modifications referred to in paragraph 11(a) are as follows.

(2) References in the 1981 Act to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is, or is to be, exercisable.

(3) References in the 1981 Act to the 1965 Act are to be read as references to that Act as it applies to a compulsory acquisition of a right under article 30.

(4) Section 8(1) of the 1981 Act (vesting, and right to enter and take possession) is modified so as to secure—

- (a) that a general vesting declaration in respect of any right vests the right in the acquiring authority on the vesting date; and
- (b) that, as from the vesting date, the acquiring authority have power, exercisable in the same circumstances and subject to the same conditions, to enter land for the purpose of exercising that right as if the circumstances mentioned in section 8(1)(a) and (b) of the 1981 Act had arisen.

(5) Section 9(2) of the 1981 Act (right of entry under section 8(1) not exercisable in respect of land subject to certain tenancies, unless notice has been served on occupiers of the land) is modified so as to require a notice served by the appropriate authority under that provision to refer to the authority's intention to enter land specified in the notice in order to exercise the right.

(6) In section 10(1) of the 1981 Act (acquiring authority's liability on vesting of land), the reference to the acquiring authority's taking possession of the land under section 11(1) of the 1965 Act is to be read instead as a reference to the authority's exercising the power to enter the land under that provision as modified by paragraph 2(5) of this Schedule.

(7) Schedule A1 to the 1981 Act (counter-notice requiring purchase of land not in general vesting declaration) has effect as if—

- (a) in paragraph 1(1), for “part only of” there were substituted “only the acquisition of a right over”;
- (b) paragraph 1(2) were omitted;
- (c) references to the land proposed to be acquired were (subject to paragraph (e) below) to the right proposed to be acquired;
- (d) references to the additional land were to the house, building or factory over which the right is proposed to be exercisable;
- (e) in paragraphs 14 and 15, references to the severance of the land proposed to be acquired were to the acquisition of the right; and
- (f) in paragraph 15, after “in addition to” there were inserted “or in substitution for”.

SCHEDULE 6

Article 31

ACQUISITION OF NEW RIGHTS ONLY

In the City of Birmingham—

<i>(1)</i> <i>Description</i>	<i>(2)</i> <i>Number of land shown on works and land plans</i>
2,467 square metres of offices, shops and premises (1-9 Temple Row, 71 and 91-99 Corporation Street, 78-86 Bull Street and 3-9 North Western Arcade).	1
2,122 square metres or thereabouts of offices, public house (Square Peg) and premises (Bull Street and Corporation Street).	3
3,979 square metres or thereabouts of shop and premises (90-122 Corporation Street, 18-19 Bull Street, 2-14 and 25 Dalton Way, 5-11 Priory Walk and 15-23 Priory Walk).	5
10,690 square metres or thereabouts of shops and premises (1-35 Martineau Place, 44-80 Corporation Street, 89-102 Bull Street, 4-19 Union Street, 63-69 High Street and Martineau Way).	7
643 square metres or thereabouts of shops and premises (56-58 High Street).	10
588 square metres or thereabouts of offices and premises (12-26 Albert Street).	22
176 square metres or thereabouts of offices and premises (28-38 Albert Street).	23
6,212 square metres or thereabouts of car park (31 Dale End and High Street Car Park).	26

SCHEDULE 7

Article [3433](#)

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

In the City of Birmingham—

<i>(1)</i> Location	<i>(2)</i> Number of land shown on works boundary	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Authorised work
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
Albert Street	33	Temporary construction area.	Work No. 1
Albert Street	34	Temporary construction area.	Work No. 2
New Road (between Moor Street Queensway (B4100) and Park Street)	36	Temporary construction area.	Work No. 2
New Road (between Moor Street Queensway (B4100) and Park Street)	37	Temporary construction area.	Work No. 2
New Road (between Moor Street Queensway (B4100) and Park Street)	40	Temporary construction area.	Work No. 2
Park Street	41	Temporary construction area.	Work No. 2
Park Street Burial Grounds	42	Temporary construction area.	Work No. 2
Eastside Park	49	Temporary construction area.	Work No. 2
Eastside Park	50	Temporary construction area.	Work No. 2

<i>(1) Location</i>	<i>(2) Number of land shown on works boundary</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Authorised work</i>
Banbury Street	51	Temporary construction area.	Work No. 2
New Canal Street	52	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

SCHEDULE 8

Article ~~44~~43

TRAFFIC REGULATION

Interpretation

In column (1) of each of the tables, the number refers to the relevant traffic regulation reference number shown on the traffic regulation plans. In the event of there being any discrepancy between a provision in this Schedule and the illustration of that provision shown on the traffic regulation plans, this Schedule prevails.

PART 1

STOPPING, WAITING OR UNLOADING

In the City of Birmingham—

Table 1

No waiting at any time

<i>(1)</i> No.	<i>(2)</i> Road	<i>(3)</i> Extent	<i>(4)</i> Notes
1.1	Dale End	On both sides of the street from a point 10 metres from the junction with Albert Street, north for a distance of approximately 35 metres.	
1.2	Mill Lane	On both sides of the street from the junction with Digbeth, south for a distance of approximately 30 metres.	
1.3	Oxford Street	On both sides of the street from the junction with Digbeth, north for a distance of approximately 25 metres.	
1.4	Milk Street	On both sides of the street from the junction with High Street Deritend, north for a distance of approximately 20 metres.	
1.5	Floodgate Street	On both sides of the street from the junction with High Street Deritend, north for a distance of approximately 20 metres.	

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
1.6	Gibb Street	On both sides of the street from the junction with High Street Deritend, north for a distance of approximately 25 metres.	
1.7	Heath Mill Lane	On both sides of the street from the junction with High Street Deritend, north for a distance of approximately 30 metres.	
1.8	Adderley Street	On both sides of the street from the junction with High Street Deritend, north for a distance of approximately 20 metres.	

Table 2

No waiting, loading or unloading at any time

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
2.1	Bull Street	On both the east and west side of the street from the junction with Corporation Street, north for a distance of approximately 50 metres.	
2.2	Corporation Street	On both the east and west side of the street from the junction with Bull Street, south for a distance of approximately 60 metres.	
2.3	Bull Street	On both the north and south side of the street from the junction with Corporation Street and the junction with Dale End/High Street.	Bus stands located on the southern side of Bull Street from the junction of High Street, north for approximately 80 metres.
2.4	High Street	On both the east and west side of the street between the junction with Carrs Lane and Bull Street.	Bus stands located to the west of High Street set back approximately 15m from the junction of Bull Street/Dale End going south approximately 35 metres. Removes 3 disabled parking bays on the east side of High Street.

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
2.5	New Meeting Street	On both the north and south side of the street between Dale End and the junction with Albert Street.	
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 approximately 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 approximately 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 approximately 5 metres from its junction with Fazeley Street.	

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
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 approximately 20 metres east of the junction of New Canal Street/Meriden Street.	
2.15	Meriden Street	On both the east and west side of the street between the junction with Bordesley Street and the junction with Coventry Street.	
2.16	Meriden Street	On both the east and west side of the street from the junction of Coventry Street to the junction with Digbeth.	

Table 3

No waiting, loading or unloading 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>
3.1	Corporation Street	On both the east and west side of the street for a distance of approximately 45 metres from the junction with Bull Street.	
3.2	Masshouse Lane	On both the east and west side of the street starting 75 metres east of the junction of James Watt Queensway/Moor Street Queensway/Jennens Road to the junction with Park Street.	
3.3	Fazeley Street	On both the north and south side of the street for a distance of 15 metres east from the junction with New Canal Street.	
3.4	Bordesley Street	On both the north and south side of the street for a distance of 35 metres west from the junction with New Canal Street.	

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
3.5	Bordesley Street	On the south side of the street for a distance of 30 metres east from the junction with New Canal Street.	
3.6	Coventry Street	On both the south and north side of the street for a distance of 20 metres west of the junction with Meriden Street and 15 metres east of the junction with Meriden Street.	

Table 4

No waiting at any time, no loading: Monday to Friday between 7:00am and 10:00am and between 4:00pm and 7:00pm

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
4.1	Digbeth/High Street Deritend	On the north side of the street from the junction with Allison Street to a distance of 140 metres east of Adderley Street.	
4.2	Digbeth/High Street Deritend	On the south side of the street from the junction with Moat Lane gyratory to a distance of 140 metres east of Adderley Street.	
4.3	Rea Street	On both the east and west side of the street for a distance of approximately 25 metres south of the junction with High Street Deritend.	

Table 5

No waiting at any time, no loading: Monday to Friday between 7:30am and 9:30am and between 4:30pm and 6:30pm

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
5.1	Alcester Street	On both the east and west side of the street for a distance of approximately 25 metres south from the junction with High Street Deritend.	

PART 2
DIRECTION OF VEHICULAR TRAFFIC

In the City of Birmingham—

Table 6
One way traffic except pedal cycles

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
6.1	Corporation Street	One way traffic in northbound direction from the junction with Bull Street to the junction with Old Square.	

Table 7
One way traffic except tramcars and pedal cycles

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
7.1	Bull Street	One way traffic in the northbound direction between the junction of Corporation Street and Dale End/High Street.	

Table 8
One way traffic

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
8.1	Albert Street	One way traffic in the westbound direction between the junction with Park Street and Moor Street Queensway.	
8.2	Park Street	One way traffic in the westbound direction between the junction with Masshouse Lane and Albert Street.	
8.3	Park Street	One way traffic in the eastbound direction between the junction with Albert Street and Masshouse Lane.	

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 approximately 65 metres.	

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
9.8	Digbeth/High Street Deritend	Prohibition 24 hours except tramcars from its junction with Meriden Street to its junction with Rea Street.	
9.9	Digbeth/High Street Deritend	Prohibition 24 hours except tramcars from its junction with Rea Street to its junction with Heath Mill Lane.	
9.10	High Street Deritend	Prohibition 24 hours except buses, hackney carriages and pedal cycles eastbound nearside lane starting approximately 25 metres east of the junction with Adderley Street for a distance of approximately 100 metres.	
9.11	High Street Deritend	Prohibition 24 hours except buses, hackney carriages and pedal cycles westbound nearside lane starting approximately 130 metres east of the junction with Adderley Street for a distance of approximately 140 metres.	

Table 10
Prohibition of Movement

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
10.1	Corporation Street	No right turn from Corporation Street onto Bull Street except tramcars and pedal cycles.	
10.2	Bull Street	No left turn from Bull Street onto Corporation Street except tramcars and pedal cycles.	

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.	

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
13.3	Albert Street	Reserved cycle lane from New Meeting Street to its junction with Moor Street Queensway.	

PART 5
PARKING SPACES

In the City of Birmingham—

Table 14
Disabled Parking

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
14.1	Dale End	On the west side of the street from a point approximately 15 metres from the junction of Dale End/Bull Street and High Street for a distance of approximately 12 metres.	
14.2	Dale End	On the east side of the street from a point approximately 35m from the junction of Dale End/Bull Street and High Street for a distance of approximately 35 metres.	
14.3	New Meeting Street	In the servicing area to the south side of the street.	2 bays to the west.
14.4	New Meeting Street	In the servicing area to the south side of the street.	4 bays to the east.

Table 15**Taxi Rank**

<i>(1)</i> <i>No.</i>	<i>(2)</i> <i>Road</i>	<i>(3)</i> <i>Extent</i>	<i>(4)</i> <i>Notes</i>
15.1	Dale End	On the west side of the street approximately 27 metres from the junction of Dale End/Bull Street and High Street for a distance of approximately 50 metres.	

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 approximately 40 metres from the junction of Park Street and Masshouse Lane for a distance of approximately 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 approximately 5 metres from its junction with Fazeley Street for a distance of approximately 15 metres.	Maximum stay 4 hours.

SCHEDULE 9

Article ~~46~~45

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers, etc. on land acquired

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274(a) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act apply in relation to any land which has been acquired under this Order, or which is held by the Authority and is appropriated or used (or about to be used) by it for the purposes of this Order or for purposes connected with those provisions; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under section 271 and 272, and sections 279(2) to (4), 280 and 282(b) which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1)—

- (a) references to the appropriate Minister are references to the Secretary of State;
- (b) references to the purpose of carrying out any development with a view to which land was acquired or appropriated are references to the purpose of carrying out the authorised works; and
- (c) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired, appropriated or used as mentioned in sub-paragraph (1).

(3) Where any apparatus of public utility undertakers or of an operator of an electronic communications code network is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Authority compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer, but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the Authority compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making that person's drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which paragraph 2, or Part 3 of the 1991 Act applies (including that Part as applied by article 5 (application of the 1991 Act)).

(6) In this paragraph—

“electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984(c);

(a) Sections 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).
(b) Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.
(c) 1984 c. 12; Schedule 2 was amended by the New Roads and Street Works Act 1991, Schedule 8 paragraphs 113 and 115, and the Communications Act 2003, Schedule 3.

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

“public utility undertakers” has the same meaning as the Highways Act 1980(b).

Apparatus of statutory undertakers, etc, in stopped up streets

2.—(1) Where a street is stopped up under article 12 (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 12 (stopping up of streets) 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) 2003 c. 21.
(b) 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. This sub-paragraph 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.

(7) Sub-paragraphs (3) to (6) do not apply where 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 any relocation works are carried out so that replacement apparatus is placed in a street, but instead—

- (a) 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
- (b) 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.

(8) 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 Highways Act 1980 or an operator of an electronic communications code network as defined in paragraph 1(6).

Application of telecommunications code

3.—(1) Paragraph 21 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) Paragraph 23 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 13 (temporary stopping up of streets) does not affect any right of an operator of an electronic communications code network under paragraph 9 of the electronic communications code 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; and

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

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Schedule have effect, unless otherwise agreed in writing between the Authority and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail Infrastructure Limited for the purposes of this Order;

“network licence” means the network licence, as amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of the powers in section 8 of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held by or used for the benefit of Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) Insofar as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) 1993 c. 43. Section 8 was amended by paragraph 4 of Schedule 17 and Part 4 of Schedule 31 to the Transport Act 2000 (c. 38), paragraphs 3 and 5 of Schedule 2 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 3 of Schedule 1 and Part 1 of Schedule 13 to the Railways Act 2005 (c. 14) and Part 1 of Schedule 1 to the Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682).

(b) 2006 c. 46.

- (a) co-operate with the Authority with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements arising from those procedures; and
- (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 22 (power to survey and investigate land, etc.) and article 27 (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) of the 1990 Act^(a) as applied by Schedule 9 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

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

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.

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 him 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 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~~52 (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 must have 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 sub-paragraph (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 plans 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 ~~54~~50 (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~~55

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.

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.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) The Authority must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the Authority at the Authority's own expense to comply with the requirements of this Schedule or (if the Authority so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 7, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Authority, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the Authority.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

5.—(1) Subject to the provisions of this Schedule and except to the extent that the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers conferred by this Order from so doing, the Authority must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by the Authority for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the Authority is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Authority to repair and restore the work, or any part of such work, or (if the Authority so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 7, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the Authority, the Authority has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Authority.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

6. Subject to paragraph 7, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Authority to the reasonable satisfaction of the Agency and if the Authority fails to do so, the

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~~52 (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 ~~54~~50 (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.

201[●] No.

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Midland Metro (Birmingham Eastside Extension) Order
201[●]

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