

Order made by the Secretary of State for Transport, subject to special parliament procedure and laid before Parliament under section 1 of the Statutory Orders (Special Procedure) Act 1945 on 8th February 2005, together with the certificate required by section 2(2) of that Act.

DRAFT STATUTORY INSTRUMENTS

2005 No.

**TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND**

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

<i>Made</i>	- - - -	<i>26th January 2005</i>
<i>Laid before Parliament</i>		<i>8th February 2005</i>
<i>Coming into force</i>	- -	<i>2005</i>

Whereas 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 2000⁽¹⁾ made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992⁽²⁾ (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act;

And whereas the Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act;

And whereas the Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

And whereas the Secretary of State is satisfied that the provision of alternative rights of way for each of the streets mentioned in Part 2 of Schedule 4 to this Order is not required;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 23rd December 2004;

And whereas the Order will not come into force until it has been laid before Parliament and has been brought into operation in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965⁽³⁾.

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 1 and 5 of, and paragraphs 1 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:

(1) S.I.2000/2190.

(2) 1992 c. 42, amended by S.I. 1995/1541 and 1998/2226.

(3) 1945 c. 18 (9 & 10 Geo 6), of which section 3 was amended by section 12 of the Transport and Works Act 1992, and 1965 c. 43.

PART 1

PRELIMINARY

Citation

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

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(4);

“the 1965 Act” means the Compulsory Purchase Act 1965(5);

“the 1984 Act” means the Road Traffic Regulation Act 1984(6);

“the 1989 Act” means the Midland Metro Act 1989(7);

“the 1990 Act” means the Town and Country Planning Act 1990(8);

“the 1991 Act” means the New Roads and Street Works Act 1991(9);

“the 1993 Act” means the Railways Act 1993(10);

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

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

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

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

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

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

“bridge” includes a viaduct;

“carriageway” has the same meaning as in the Highways Act 1980(11);

“the deposited sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;

“Dudley” means the metropolitan borough of Dudley;

“the Executive” means West Midlands Passenger Transport Executive;

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

(4) 1961 c. 33.
(5) 1965 c. 56.
(6) 1984 c. 27.
(7) 1989 c. xv.
(8) 1990 c. 8.
(9) 1991 c. 22.
(10) 1993 c. 43.
(11) 1980 c. 66.

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

“the limits of deviation” means the limits of deviation for the scheduled works shown on the works plans;

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

“the Order limits” means any of—

- (a) the limits of deviation, or
- (b) the limits of land to be acquired or used shown on the land plans;

“owner” in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;

“Sandwell” means the metropolitan borough of Sandwell;

“the scheduled works” means the works specified in Schedule 1 to this Order or any part of them;

“street” includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part III of the 1991 Act;

“street tramway” means any part of a tramway which is laid along a street—

- (a) whether or not the section of the street in which its rails are laid may be used by other traffic; or
- (b) whether the uppermost surface of the rails is level with, lower than, or raised above, the surrounding surfaces of the street;

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

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

“tramway” means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which provide support and guidance for vehicles carried on flanged wheels;

“the tribunal” means the Lands Tribunal; and

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

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space over its surface, and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

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

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

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

Application of New Roads and Street Works Act 1991

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

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the Highways Act 1980⁽¹²⁾ (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings).

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

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

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

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of alternative route); and

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

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

Incorporation of the Railways Clauses Consolidation Act 1845

4.—(1) The following provisions of the Railways Clauses Consolidation Act 1845⁽¹³⁾ shall be incorporated in this Order—

- sections 68 and 69 (accommodation works by company);
- section 71 (additional accommodation works by owners);
- sections 72 and 73 (supplementary provisions relating to accommodation works);
- section 75 (omission to fasten gates);
- sections 87 and 88 (contracts with other companies);
- section 97 (default in payment of tolls);
- sections 103 and 104 (refusal to quit carriage at destination);

⁽¹²⁾ 1980 c. 66.

⁽¹³⁾ 1845 c. 20.

section 105 (carriage of dangerous goods on railway);
section 144 (defacing of boards);
section 145 (recovery of penalties);
section 154 (transient offenders).

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

“the company” means the Executive;

“goods” includes any thing conveyed on the authorised tramway;

“lease” includes an agreement for a lease;

“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;

“the railway” means the authorised tramroads and (subject to paragraph (6)) the authorised street tramways, together with any authorised works ancillary thereto;

“the special Act” means this Order;

“toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any authorised tramway to be constructed under this Order.

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

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

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

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

Application of the Midland Metro Acts

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

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

(b) section 18 of the (No. 2) 1992 Act,

but it shall not be so treated for the purposes of the following—

(i) sections 5(4) and (5), 15, 24, 44 and 45 of the 1989 Act; and

(ii) section 24 of the 1992 Act.

(2) The authorised tramway shall be treated as part of the Metro (as defined in the Midland Metro Acts) for the purposes of sections 4 to 7 of the Midland Metro (Penalty Fares) Act 1991(14) and of any order made from time to time under sections 3(2) or 5(2) of that Act (whether made before or after this Order comes into force), and expressions defined in section 2 of that Act shall have effect accordingly.

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

(14) 1991 c. ii.

- (a) references to the railways board in sections 16 and 17 of the 1989 Act shall be treated as references to a person holding a licence under section 8 of the 1993 Act or a person exempt, by virtue of section 7 of the 1993 Act, from the requirement to be authorised by such a licence;
 - (b) the reference to section 56 of the Transport Act 1962⁽¹⁵⁾ in section 17(1) of the 1989 Act shall be treated as a reference to Schedule 5 to the 1993 Act, and section 17(2) of the 1989 Act shall be construed in accordance with section 49(6) of the 1993 Act;
 - (c) references to the railway in sections 46(1) and 48 of the 1989 Act shall be treated as including the authorised tramway;
 - (d) the reference in section 47 of the 1989 Act to any tramway shall be treated as reference to the authorised street tramways;
 - (e) the reference in section 48 of the 1989 Act to any railway of the Metro which is not designated as a tramway shall be treated as a reference to any authorised tramroad;
 - (f) references to railway premises in sections 49 and 52 of the 1989 Act shall be treated as including any premises of the Executive used in connection with the operation or maintenance of the authorised tramway.
- (4) Section 8(4) of the 1989 Act shall have effect for the purposes of the authorised street tramways as it has effect for the purposes of the tramways authorised by that Act.
- (5) In this article—
- “the Midland Metro Acts” means the 1989 Act⁽¹⁶⁾, the Midland Metro (Penalty Fares) Act 1991, the 1992 Act and the Midland Metro (No. 2) Act 1992⁽¹⁷⁾;
- “the 1992 Act” means the Midland Metro Act 1992⁽¹⁸⁾; and
- “the (No. 2) 1992 Act” means the Midland Metro (No. 2) Act 1992.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

- 6.**—(1) The Executive may construct and maintain the scheduled works.
- (2) Subject to article 7, the scheduled works shall be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the deposited sections.
- (3) Subject to paragraph (6), the Executive may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the scheduled works namely—
- (a) stations, platforms, junctions, stopping places and parking areas (including park and ride sites);
 - (b) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised tramway;

(15) 1962 c. 46.
(16) 1989 c. xv.
(17) 1992 c. viii.
(18) 1992 c. vii.

- (c) works for the strengthening, alteration or demolition of any building or structure;
- (d) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (e) works to alter the position of any apparatus or street furniture, including mains, sewers, drains, cables and lights;
- (f) without prejudice to the generality of sub-paragraph (e), works to alter the position of any railway track or other railway infrastructure;
- (g) landscaping, environmental and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
- (h) works for the benefit or protection of premises affected by the authorised works.

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

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

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

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

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

(8) The relocation of any existing railway track or other railway infrastructure under paragraph (3) (f) shall not affect the application to that track or infrastructure of any enactment (including the Town and Country Planning (General Permitted Development) Order 1995(19)) authorising or regulating its maintenance or operation.

Power to deviate, etc.

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

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

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

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

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

(d) double or single lines of rails in lieu of interlacing lines.

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

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

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

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

Designation of works

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

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

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

Streets

Power to alter layout, etc. of streets

9.—(1) The Executive may alter the layout of, and carry out other ancillary works in, any street specified in columns (1) and (2) of Schedule 3 to this Order in the manner specified in relation to that street in column (3) of that Schedule.

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

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (c) construct, alter or remove traffic islands and central reserves;
- (d) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for tramcars or by carrying out other works for that purpose;

- (e) carry out works to the street for the purpose of deterring or preventing vehicles other than trams from passing along the tramway;
 - (f) make and maintain crossovers, sidings or passing places; and
 - (g) carry out works for the provision or alteration of parking places.
- (3) The following shall require the consent of the street authority—
- (a) the exercise of the powers conferred by paragraph (2);
 - (b) the exercise of the power to deviate conferred by article 7(1)(b) with respect to the construction or maintenance of a scheduled work comprising a street tramway, where it would require the alteration of the level of the carriageway of the street carrying the tramway;
 - (c) the exercise of the power to deviate conferred by article 7(1)(b) with respect to the construction or maintenance of a scheduled work comprising the alteration of the level or alignment of a highway; or
 - (d) the exercise of the power conferred by article 10 with respect to the placing in the street of supports for overhead line equipment for any authorised street tramway.
- (4) Consent under paragraph (3) shall not be unreasonably withheld.

Power to keep apparatus in streets

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

- (2) In this article—
- (a) “apparatus” has the same meaning as in Part III of the 1991 Act;
 - (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989⁽²⁰⁾; and
 - (c) the reference to any work, equipment or apparatus in a street includes a reference to any work, equipment or apparatus under, over, along or upon the street.

Power to execute street works

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

Permanent stopping up of means of access

- 12.**—(1) The Executive may stop up and discontinue the following—
- (a) the private means of access at Tipton Road at point LA in Dudley, and
 - (b) the private means of access at Cottage Street at points XB and XC in Dudley;
- and it may carry out any incidental operations within the Order limits for those purposes.

(20) 1989 c. 29.

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

Permanent stopping up of streets

13.—(1) Subject to the provisions of this article, the Executive may, in connection with the construction of the authorised works, stop up each of the streets mentioned in columns (1) and (2) of Parts 1 and 2 of Schedule 4 to this Order to the extent specified, by reference to the letters shown on the works plans, in column (3) of Parts 1 and 2 of that Schedule.

(2) No street specified in columns (1) to (3) of Part 1 of Schedule 4 (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article until the date of practical completion of the new street to be substituted for it (as specified in relation to it in column (4) of that Part of that Schedule) and the new street is open for use.

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

(4) No part of a street specified in columns (1) to (3) of Part 2 of Schedule 4 to this Order (being a street to be stopped up for which no substitute is to be provided) shall be stopped up under this article unless all the land which abuts it falls within one or more of the following categories, namely—

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

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

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) the Executive may, without making any payment, appropriate and use for the purposes of its tramway undertaking so much of the site of the street as is bounded on both sides by land owned by the Executive.

(6) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961⁽²¹⁾.

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

Temporary stopping up of streets

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

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

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

(3) Without prejudice to the generality of paragraph (1), the Executive may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 5 to this Order

(21) 1961 c. 33.

to the extent specified, by reference to the letters shown on the works plans, in columns (3) and (4) of that Schedule.

- (4) The Executive shall not exercise the powers of this article—
- (a) in relation to the street specified as mentioned in paragraph (3), without first consulting the street authority; and
 - (b) in relation to any other street, without the consent of the street authority, but such consent shall not be unreasonably withheld.

Access to works

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

- (a) at the points shown on the works plans; or
 - (b) in such locations within the Order limits as may be approved by the highway authority.
- (2) Approval of the highway authority under paragraph (1)(b) shall not be unreasonably withheld.

Construction and maintenance of new or altered highways

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

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

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

(4) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (respectively maintainable highways); and the Executive shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

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

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

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

- (a) the character of the highway, including its use for a railway or tramway, and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a highway of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the highway;

- (d) whether the Executive knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway;
- (e) where the Executive could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed;

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

Construction and alteration of bridges

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

Restoration of streets if street tramway discontinued

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

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

Agreements with street authorities

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

- (a) the construction of any new street (including any structure carrying the street over or under any authorised tramway) under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge carrying a highway over any authorised tramway or any authorised tramway over a highway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the execution in the street of any of the works referred to in article 11.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) provide for the street authority to carry out any function under this Order which relates to the street in question, and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Level crossings

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

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

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

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

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

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

(7) In this article—

“barrier” includes gate;

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

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

Closure of level crossings

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

(a) so much of footpath FP82 in Sandwell as lies between points AP and AQ; and

(b) so much of Bagnall Street and Eagle Lane in Sandwell as lies between points AT and AU.

(2) On a highway or part of a highway being stopped up under this article—

(a) all rights of way over or along it shall be extinguished;

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

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

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

(5) The Executive may postpone—

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

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

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

(6) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961⁽²²⁾.

Supplemental powers

Discharge of water

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

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

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

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

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

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991⁽²³⁾.

(7) In this article—

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

Attachment of equipment to buildings for purposes of tramway

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

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

⁽²²⁾ 1961 c. 33.

⁽²³⁾ 1991 c. 57.

(3) Where—

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

the consent shall be deemed to have been withheld.

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

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

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

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

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

(8) In this article—

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

“relevant owner”—

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

Safeguarding works to buildings

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

(2) Safeguarding works may be carried out—

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

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

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

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

(5) Before exercising—

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

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

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

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

(8) Where—

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

the Executive shall compensate the owners and occupiers of the building for any damage sustained by them.

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

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

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

(12) In this article—

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

Power to construct temporary tramways

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

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

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

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

Power to survey and investigate land

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

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

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

(3) Any person entering land under this article on behalf of the Executive—

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary for the purpose of exercising any of the powers conferred by paragraph (1).

(4) No trial hole shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The Executive shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the 1961 Act.

Mode of construction and operation of tramway

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

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

(3) Where a tramway is constructed along a street or in any place to which the public has access (including any place to which the public has access only on the making of a payment), the Executive shall take such care as in all the circumstances is reasonable to ensure that the tramway is constructed and maintained so that the street or other place is safe for other users.

(4) When considering what measures are required under paragraph (3), the Executive shall have particular regard to the character and usage of the street or other place and to those who could reasonably be expected to use it.

Temporary interference with waterways

28.—(1) Without prejudice to the generality of the powers conferred by article 6, the Executive may in connection with the construction of Work No. 1D, 1E, 3B, 12 or 14—

- (a) temporarily interfere with any relevant waterway, by constructing or maintaining temporary works at any point within the Order limits as it considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in any relevant waterway, load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials in connection with the construction of the works; and
- (c) temporarily close any relevant waterway, or a part of it, to navigation.

(2) The power conferred by paragraph (1)(c) shall be exercised in a way which secures—

- (a) that no more of a relevant waterway is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure of a relevant waterway to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use it.

(3) Any person who suffers loss by reason of the interference by virtue of this article with any private right of navigation shall be entitled to compensation to be paid by the Executive to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

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

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

29. The Executive may acquire compulsorily—

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

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

Application of Part I of the Compulsory Purchase Act 1965

30.—(1) Part I of the 1965 Act, insofar as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽²⁴⁾ applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

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

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—
 - (i) in a case where the notice to treat relates only to the acquisition of an easement or other right over the land, a reference to notice of one month; or
 - (ii) in any other case, a reference to notice of 3 months.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

31.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽²⁵⁾ shall apply as if this Order were a compulsory purchase order.

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

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

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession), and
- (b) published in the London Gazette and in a local newspaper circulating in the area in which the land is situated”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion, or
- (b) he holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in the London Gazette and in a local newspaper circulating in the area in which the land is situated”, and
- (b) subsection (2) shall be omitted.

⁽²⁴⁾ 1981 c. 67.

⁽²⁵⁾ 1981 c. 66.

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

(8) References to the Compulsory Purchase Act 1965 shall be construed as references to that Act as applied to the acquisition of land under article 29.

Power to acquire rights

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

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

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

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

(5) Schedule 7 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this Order of a right over land by the creation of a new right.

Rights under or over streets

33.—(1) The Executive may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose connected with or ancillary to the authorised tramway.

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

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

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

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

Temporary possession of land

Temporary use of land for construction of works

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

- (a) enter upon and take temporary possession of—

- (i) any of the land specified in columns (1) and (2) of Schedule 8 to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule, and
 - (ii) subject to paragraph (9), any of the general land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from the land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.
- (2) Not less than 28 days before entering upon and taking temporary possession of land under this article the Executive shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) The Executive may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of the land specified in columns (1) and (2) of Schedule 8 to this Order, after the end of the period of one year beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 8 to this Order; or
 - (b) in the case of the general land, after the end of the period of one year beginning with the date of completion of the work or works for which temporary possession of the land was taken unless the Executive has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the Executive shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Executive shall not be required to replace a building removed under this article.
- (5) The Executive shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.
- (7) Without prejudice to article 54, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).
- (8) Where the Executive takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (9) Paragraph (1)(a)(ii) shall not authorise the Executive to take temporary possession of—
- (a) any dwelling house or garden belonging to a dwelling house; or
 - (b) any building (other than a dwelling house) if it is for the time being occupied.
- (10) In this article—
- “building” includes any structure or erection; and
- “the general land” means any land within the Order limits other than—
- (a) the land specified in columns (1) and (2) of Part 2 of Schedule 2 to this Order;
 - (b) the land specified in columns (1) and (2) of Schedule 8 to this Order;

- (c) the land in Dudley shown numbered 560 to 565, 620, 729 and 730 on the land plans;
- (d) the land in Sandwell shown numbered 503, 535 to 537, 545, 546, 631, 704 and 705 on the land plans.

Temporary use of land for maintenance of works

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

- (a) enter upon and take temporary possession of any land within the Order limits and lying within 20 metres from those works if such possession is reasonably required for the purpose of, or in connection with, maintaining the works or any ancillary works connected with them;
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the Executive to take temporary possession of—

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

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

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

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

(6) The Executive shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.

(8) Without prejudice to article 54, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

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

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

(11) In this article—

- (a) “the maintenance period”, in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for use;

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

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

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

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

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

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

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

(6) The Executive shall pay compensation to the owners and occupiers of any land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

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

(8) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.

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

Compensation

Disregard of certain interests and improvements

37.—(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land under this Order, the tribunal shall not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land;

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Acquisition of part of certain properties

38.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 30) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or factory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the Executive a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the Executive agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house;

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house;

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice;

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Executive is authorised to acquire compulsorily under this Order.

(8) If the Executive agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
 - (b) that the material detriment is not confined to a part of the land subject to the counter-notice;
- the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Executive is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the Executive may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so it shall pay the owner compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the Executive shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of rights of way

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

- (a) as from the acquisition of the land by the Executive, whether compulsorily or by agreement;
- (b) on the entry on the land by the Executive under section 11(1) or (2) of the 1965 Act; or
- (c) as from the use by the Executive for the purposes of the authorised works of land in which the Executive hold a legal estate,

whichever is sooner.

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

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

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

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

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

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

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

Time limit for exercise of powers of acquisition

40.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat shall be served under Part I of the 1965 Act, as applied to the acquisition of land by article 30; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981⁽²⁶⁾, as applied by article 31.

(2) The powers conferred by article 34 shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the Executive remaining in possession of land after the end of that period if the land was entered and possession of it was taken before the end of that period.

PART 4

OPERATION OF TRAMWAY SYSTEM

Power to operate and use tramway system

41.—(1) The Executive may operate and use the authorised tramway and the other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Subject to paragraph (4) and to section 54 of the 1989 Act (as applied by article 5), the Executive shall, for the purpose of operating the authorised tramway, have the exclusive right—

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

(3) Any person who, without the consent of the Executive or other reasonable excuse, uses the apparatus mentioned in paragraph (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Nothing in this article shall restrict the exercise of any public right of way over any part of a street in which apparatus is situated in pursuance of paragraph (2) except to the extent that the exercise of the right is constrained by the presence of the apparatus.

Maintenance of approved works etc.

42.—(1) Where, pursuant to regulations⁽²⁷⁾ made under section 41 of the 1992 Act (approval of works, plant and equipment), approval has been obtained from the Secretary of State with respect to any works, plant or equipment (including vehicles) forming part of the authorised tramway, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the authorised tramway.

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

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

⁽²⁶⁾ 1981 c. 66.

⁽²⁷⁾ See S.I. 1994/157.

Power to charge fares

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

Traffic signs

44.—(1) The Executive may, for the purposes of, or in connection with the operation of, the authorised tramway, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State on or near any street along which tramcars using the authorised tramway are run.

(2) The Executive—

- (a) shall consult with the traffic authority as to the placing of signs; and
- (b) unless the traffic authority are unwilling to do so and subject to any directions given under section 65 of the 1984 Act, shall enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

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

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on or near any street along which tramcars using the authorised tramway are run shall consult with the Executive as to the placing of any traffic sign which would affect the operation of the authorised tramway.

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

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

Tree preservation orders

45. The following, namely—

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

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

Obstruction of construction of authorised works

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

Traffic regulation

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

- (a) prohibit or restrict in the manner specified in the table in Part 1 of Schedule 9 to this Order the waiting, loading and unloading of vehicles on any road specified in columns (1) and (2) of that table and as described in relation to the road in column (3) of that table;
 - (b) make provision in the manner specified in the table in Part 2 of Schedule 9 to this Order as to the permitted direction of movement of vehicular traffic on any road specified in columns (1) and (2) of that table and as described in relation to the road in column (3) of that table;
 - (c) prohibit in the manner specified in any of the tables in Part 3 of Schedule 9 to this Order vehicular access on any road specified in columns (1) and (2) of those tables and as described in relation to the road in column (3) of those tables;
 - (d) revoke in whole or in part any traffic regulation order in so far as the revocation is consequential on any prohibition, restriction or other provision made under this paragraph.
- (2) The Executive or the Council shall not exercise the powers of this article unless it has given not less than 12 weeks' notice in writing of its intention so to do to the chief officer of police in whose area the road is situated; and the Executive shall not exercise the powers of this article unless it has in addition obtained the prior consent of the Council.
- (3) The Council shall not exercise the powers of this article unless it has consulted the Executive.
- (4) Any prohibition, restriction or other provision made by the Executive or the Council under this article shall have effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act, and the instrument by which it is effected may specify savings to which the prohibition, restriction or other provision is subject which are in addition to any exceptions provided for in Schedule 9 to this Order.
- (5) Any prohibition, restriction or other provision made under this article may be varied or revoked from time to time by subsequent exercises of the powers of this article by the Executive or the Council (whether or not prior to the expiry of the period of 12 months referred to in paragraph (1)), but the Executive shall not vary or revoke any provision previously made by the Council under this article without the consent of the Council, and the Council shall not vary or revoke any provision previously made by the Executive under this article without the consent of the Executive.
- (6) Any prohibition, restriction or other provision made under this article may also be varied or revoked from time to time by the Council by a traffic regulation order under the 1984 Act, but the Council shall not by such an order vary or revoke any provision previously made by the Executive under this article without the consent of the Executive.
- (7) Any consent required under paragraph (2), (5) or (6) shall not be unreasonably withheld.
- (8) In this article "the Council" means Dudley Metropolitan Borough Council.

PART 5

MISCELLANEOUS AND GENERAL

Planning permission: supplementary matters

48.—(1) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

(2) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation

Order) Regulations 1969⁽²⁸⁾ as incorporated in any tree preservation order, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act.

(3) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999⁽²⁹⁾ as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not be treated as an outline planning permission.

Statutory undertakers, etc.

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

Minerals

50.—(1) Parts II and III of Schedule 2 to the Acquisition of Land Act 1981⁽³⁰⁾ (exception of minerals from compulsory purchase and regulation of the working of mines or minerals underlying an authorised undertaking) shall have effect in relation to land to which article 29 applies as if it were comprised in a compulsory purchase order providing for the incorporation with that order of those Parts of that Schedule.

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

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

Saving for highway authorities

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

Certification of plans etc.

52. The Executive shall, as soon as practicable after the making of this Order, submit one or more copies of the book of reference, the deposited sections, the land plans and the works plans to the Secretary of State for certification that they are, respectively, the book of reference, the deposited sections, the land plans and the works plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

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

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

⁽²⁸⁾ S.I. 1969/17.

⁽²⁹⁾ S.I. 1999/1892.

⁽³⁰⁾ 1981 c. 67.

(3) For the purposes of section 7 of the Interpretation Act 1978⁽³¹⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, his last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

54. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Disclosure of confidential information

55. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 24 or 26; and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter the land.

Withholding of consent

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

Arbitration

57. Where under this Order (including any provision incorporated in or applied by this Order) any difference (other than a difference to which the provisions of the 1965 Act apply) is to be determined by or referred to arbitration, then the difference shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed, on the application of either party (after notice in writing to the other), by the President of the Institution of Civil Engineers.

(31) 1978 c. 30.

Protective provisions

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

Midland Metro Line 1: miscellaneous amendments

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

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

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

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

(5) In this article—

“the 1870 Act” means the Tramways Act 1870(32);

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

“the relevant repairing provisions” means—

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

Signed by authority of the Secretary of State for Transport

26th January 2005

David Jamieson
Parliamentary Under Secretary of State
Department for Transport

SCHEDULES

SCHEDULE 1

Article 2

SCHEDULED WORKS

Note: In the following descriptions—

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

“the South Staffordshire Railway” means the South Staffordshire Junction Railway; and

“the Dudley Railway” means the Oxford, Worcester and Wolverhampton Railway (Wolverhampton and Dudley).

In the metropolitan borough of Sandwell

Work No. 1—A tramroad (1,850 metres in length) commencing by a junction with Midland Metro Line 1 at a point 90 metres north-west of the bridge carrying Midland Metro Line 1 over the South Staffordshire Railway, passing over the existing access road to the Midland Metro Line 1 depot on viaduct, then passing south-westwards along the course of the South Staffordshire Railway and terminating at a point 45 metres south-west of the bridge carrying the South Staffordshire Railway over the Walsall Canal. Work No. 1 includes the construction of the said viaduct over the access road to the Midland Metro Line 1 depot, a footbridge over the South Staffordshire Railway and Work No. 1 at Golds Hill and a foot and cycle bridge over the South Staffordshire Railway and Work No. 1 at Bagnall Street and Eagle Lane.

Work No. 1A—A tramroad (135 metres in length) comprising a spur connecting Midland Metro Line 1 and Work No. 1, commencing by a junction with Midland Metro Line 1 at a point 70 metres south-east of the bridge carrying Midland Metro Line 1 over the South Staffordshire Railway and terminating by a junction with Work No. 1 at chainage 145 metres of Work No. 1.

Work No. 1B—A tramroad (468 metres in length) comprising a spur to the existing Midland Metro Line 1 depot at Wednesbury, commencing at a point in the said depot 100 metres south-east of the bridge carrying Midland Metro Line 1 over Black Country New Road and terminating by a junction with Work No. 1 at chainage 320 metres of Work No. 1.

Work No. 1C—Widening of the existing bridge carrying the South Staffordshire Railway over the River Tame.

Work No. 1D—Widening of the existing bridge carrying the South Staffordshire Railway over the Tame Valley Canal.

Work No. 1E—Reconstruction and widening of the existing bridge carrying the South Staffordshire Railway over the Walsall Canal.

Work No. 2—A tramroad (1,530 metres in length) commencing by a junction with Work No. 1 at its termination, continuing south-westwards along the course of the South Staffordshire Railway and terminating at a point 45 metres south-west of the bridge carrying the Birmingham Canal over the said railway. Work No. 2 includes the construction of footbridges over the South Staffordshire Railway and Work No. 2 at chainages 1,015 metres and 1,434 metres of Work No. 2.

Work No. 2A—Reconstruction of the existing bridge carrying New Road over the South Staffordshire Railway.

Work No. 2B—Reconstruction and widening of the existing bridge carrying Horseley Road over the South Staffordshire Railway, including a widening of Horseley Road on both sides across the bridge and the approaches thereto.

Work No. 2C—Reconstruction and widening of the existing bridge carrying Lower Church Lane over the South Staffordshire Railway, including a widening of Lower Church Lane on both sides across the bridge and the approaches thereto.

Work No. 2D—Reconstruction and widening of the existing bridge carrying Park Lane East over the South Staffordshire Railway including a widening of Park Lane East on both sides across the bridge and the approaches thereto.

In the metropolitan boroughs of Sandwell and Dudley

Work No. 3—A tramroad (1,817 metres in length) commencing by a junction with Work No. 2 at its termination, continuing south-westwards along the course of the South Staffordshire Railway, passing over Tipton Road and terminating at a point on the eastern side of that road 130 metres north of its junction with Castlegate Way.

In the metropolitan borough of Sandwell

Work No. 3A—Reconstruction and widening of the existing bridge carrying the South Staffordshire Railway over Sedgley Road East including a widening of Sedgley Road East on both sides.

Work No. 3B—Widening of the existing bridge carrying the South Staffordshire Railway over the Birmingham Canal.

In the metropolitan boroughs of Sandwell and Dudley

Work No. 3C—Widening of the existing bridge carrying the South Staffordshire Railway over Birmingham New Road.

Work No. 4—not used.

In the metropolitan borough of Dudley

Work No. 5—A tramroad (402 metres in length) commencing by a junction with Work No. 3 at its termination, passing southwards and terminating at a point on the northern side of Castle Hill 10 metres east of its junction with Station Drive.

Work No. 6—A street tramway (477 metres in length, double line) commencing by a junction with Work No. 5 at its termination, passing westwards along Castle Hill, southwards along Birmingham Street (North) and terminating in Dudley Bus Station at a point 55 metres north of the junction of Trindle Road with Porters Field.

Work No. 7—A tramroad (74 metres in length) commencing by a junction with Work No. 6 at its termination, passing south-westwards and terminating at a point on the north-eastern side of Birmingham Street (South) 55 metres north of its junction with King Street.

Work No. 8—A street tramway (184 metres in length, double line) commencing by a junction with Work No. 7 at its termination, passing southwards along Birmingham Street (South) and King Street and terminating on the southern side of King Street at its junction with Flood Street.

Work No. 9—A tramroad (250 metres in length) commencing by a junction with Work No. 8 at its termination, passing southwards along Flood Street (to be stopped up) and terminating at a point 55

metres west of the centre of the central island of Flood Street roundabout. Work No. 9 includes a new service access from King Street to premises on the western side of Flood Street.

Work No. 9A—Realignment of Flood Street, commencing at a point on the southern side of King Street 20 metres east of the existing junction of that street with Flood Street passing southwards and terminating at a point 40 metres north-west of the centre of the central island of Flood Street roundabout.

Work No. 9B—Realignment of The Minories, commencing by a junction with Flood Street as proposed to be realigned (Work No. 9A) at a point 10 metres east of the existing junction of Flood Street with Oakeywell Street and terminating at the existing junction of The Minories with New Mill Street.

Work No. 9C—Realignment and extension of Constitution Hill commencing at a point 25 metres south of the junction of Constitution Hill and New Mill Street and terminating at a point 5 metres north of the junction of The Minories and King Street Passage.

Work No. 10—A street tramway (955 metres in length, double line) commencing by a junction with Work No. 9 at its termination passing south-westwards along the north-western side of Dudley Southern Bypass and terminating at a point 100 metres north-east of the centre of the central island of Cinder Bank roundabout.

Work No. 11—A tramroad (1,579 metres in length) commencing by a junction with Work No. 10 at its termination, passing south-westwards along the course of the Dudley Railway, over the Parkhead Viaduct and terminating at a point 295 metres south-west of the bridge carrying Pedmore Road over the said railway. Work No. 11 includes the reconstruction of the said Parkhead Viaduct.

Work No. 11A—An access road to Work No. 11 and the intended Pedmore Road tramstop, commencing at a point on Buxton Road 40 metres east of its junction with Wood Street and terminating at a point 75 metres south of its commencement.

Work No. 12—A tramroad (1,153 metres in length) commencing by a junction with Work No. 11 at its termination, passing south-westwards then southwards, over Canal Street (to be extended, Work No. 12A) by means of a bridge and then on the level, over the Dudley Canal, then passing eastwards across the access road to Round Oak Rail and other premises, (to be altered, Work No. 12B), then southwards across Waterfront Way (North) (to be realigned, Work No. 12C) and Waterfront Way (South) (to be realigned, Work No. 12D) and terminating at a point 30 metres north-east of the centre of the central island of Level Street roundabout. Work No. 12 includes the construction of bridges carrying the intended tramroad over the Pensnett Canal, over the Dudley Canal and over the extension of Canal Street (Work No. 12A).

Work No. 12A—An extension of Canal Street from its eastern end passing eastwards then southwards then westwards and terminating at a point 115 metres south of its commencement.

Work No. 12B—Alteration of the alignment and level of the access to Round Oak Rail and other premises commencing 35 metres north-west of the centre of Waterfront Way North roundabout passing westwards and terminating at a point 170 metres west of its commencement.

Work No. 12C—Alteration of the alignment and level of Waterfront Way (North) commencing 160 metres west of the centre of the central island of Waterfront Way (North) roundabout, passing south-westwards then westwards and terminating at a point 145 metres west of its commencement.

Work No. 12D—Realignment of Waterfront Way (South) commencing 230 metres north-east of the centre of the central island of Level Street roundabout, passing south-westwards and terminating at a point 25 metres north of the centre of that island.

Work No. 13—A street tramway (56 metres in length, double line) commencing by a junction with Work No. 12 at its termination, passing southwards across Level Street roundabout and terminating at a point on the south side of that roundabout 5 metres west of the junction of Level Street with The Embankment.

Work No. 14—A tramroad (695 metres in length) commencing by a junction with Work No. 13 at its termination, passing south-westwards over the Dudley Canal and terminating 10 metres south-east of the junction of Little Cottage Street with Cottage Street. Work No. 14 includes the construction of a bridge carrying the intended tramway over the Dudley Canal.

Work No. 14A—Realignment of The Embankment (including the reduction of the width of the carriageway to a single lane) from its junction with Level Street roundabout to its junction with Central Way.

Work No. 14B—Realignment of Cottage Street from a point 155 metres north-east of its junction with Little Cottage Street, passing south-eastwards and then south-westwards and terminating at a point 65 metres north-east of that junction.

Work No. 14C—An access road to the Brierley Hill leisure centre and Brier School playing fields commencing at a point on Little Cottage Street 105 metres south-east of its junction with Cottage Street and terminating at a point 110 metres east of its commencement.

SCHEDULE 2

Article 29

ACQUISITION OF LAND, ETC OUTSIDE LIMITS OF DEVIATION

PART 1

ACQUISITION OF LAND

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purposes for which land may be acquired</i>
Metropolitan Borough of Sandwell	510 and 719	Hard and soft landscaping
	512, 701 and 720	Hard and soft landscaping; vehicular and pedestrian access to station; diversion of public footpath FP82
	542, 706 and 707	Working site and construction compound; turning head; electricity substation; park and ride site
	544 and 724	Pedestrian access to station
	551	Pedestrian access to station
Metropolitan Borough of Dudley	554 and 766	Pedestrian access to station
	577, 578 and 645	Working site and construction compound; park and ride site
	558 and 559	Turning head
	572	Removal of footbridge and related works

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 No. 927

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purposes for which land may be acquired</i>
	586	Working site and construction compound; park and ride site
	643, 644 and 753	Hard and soft landscaping
	651, 652 and 712	Hard and soft landscaping; pedestrian access to station

PART 2

ACQUISITION OF RIGHTS ONLY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purposes for which rights may be acquired</i>
Metropolitan Borough of Dudley	590	Access for construction and maintenance of authorised tramway and related works
	594 to 603, 710, 711, 756, 757 and 800	Access and working space for construction and maintenance of authorised tramway and related works including Parkhead Viaduct
	604	Access for construction and maintenance of authorised tramway and related works
	606 and 607	Access for construction and maintenance of authorised tramway and related works
	804	Access for construction and maintenance of authorised tramway and related works
	805 to 807	Access for construction and maintenance of authorised tramway and related works
	810	Access for construction and maintenance of authorised tramway and related works
	811	Access for construction and maintenance of authorised tramway and related works
	812	Access for construction and maintenance of authorised tramway and related works

SCHEDULE 3

Article 9

STREETS SUBJECT TO ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
Metropolitan Borough of Sandwell	Railway Street	Kerblines and footway to be realigned and a turning head provided between points C1, C2, C3 and C4. Kerblines to be formed at points CA and CB.
	Horseley Road	Kerblines and footways to be set back between points— D1 and D1A D1B and D2. Kerblines to be set forward between points D2 and D3. Footway to be set back between points D4 and D5.
	Lower Church Lane	Kerblines to be set back between points E1 and E2. Kerblines and footways to be set back between points— E2 and E3 E4 and E5.
	Keelinge Street	Kerblines to be realigned between points E5 and E6.
	Park Lane East	Kerblines and footway to be set back between points F1 and F2.
	Park Lane East/Smith Place	Kerblines to be set forward between points F3 and F4. Kerblines and footway to be realigned between points F5 and F6.
	Park Lane East/Station Street	Kerblines to be realigned between points F7 and F8.
	Sedgley Road East	Kerblines and footways to be realigned between points—

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
		J1 and J2
		J3 and J4.
Metropolitan Borough of Dudley	Tipton Road	Vehicular access to be closed and kerblines formed at point LA.
	Castle Hill/Trindle Road	Kerblines to be realigned between points— N1 and N2
	Station Drive/Castle Hill	Kerblines to be realigned between points— N3, N4, N5 and N3. N6 and N7
	Trindle Road/Castle Hill/ Birmingham Street/Bourne Street	Kerblines to be realigned between points N8 and N9.
	Castle Hill	Kerblines (central reserve) to be realigned between points N13, N14 and N15.
	Castle Hill/Birmingham Street	Kerblines to be realigned between points N16 and N17.
	Birmingham Street	Kerblines to be realigned between points N18 and N19.
	Bourne Street	Kerblines and footways to be realigned and a turning head provided between points P1, P2, P3, P4 and P5. Carriageway to be restored between points X and Y and kerblines and footways to be realigned between points—
		P6 and P7
		P8 and P9.
	Porters Field	Vehicular access to be closed and kerblines formed at point QC.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
	King Street	<p>Kerblines to be set back between points R1 and R2.</p> <p>Kerblines to be realigned between points—</p> <p>R3, R3A and R4 (central reservation)</p> <p>R5 and R6</p> <p>R7 and R8</p> <p>R9 and R10.</p> <p>Footbridge to be removed between points SR and SS.</p>
	Level Street/The Embankment/ Waterfront Way Roundabout	<p>Kerblines to be realigned between points—</p> <p>V1 and V2</p> <p>V3, V4 and V3 (central island)</p> <p>V5, V6, V7 and V5</p> <p>V12, V13, V14 and V15 (central reservation)</p> <p>V18, V19 and V18 (central island).</p> <p>Kerblines and footways to be realigned between points—</p> <p>V8 and V9</p> <p>V10 and V11</p> <p>V16 and V17.</p>

SCHEDULE 4

Article 13

STREETS TO BE STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New substitute to be provided</i>
Metropolitan Borough of Dudley	Flood Street	Between points RA and SF	Work No. 9A.
	The Minories	Between points SC and SD	Work No. 9B.
	New Mill Street	Between points SG and SI	Works Nos. 9B and 9C.
	Cottage Street	Between points XA and XD	Work No. 14B.

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
Metropolitan Borough of Sandwell	Footpath FP41	Between points AA and AB.
	Railway Street	Between points CA and CB.
Metropolitan Borough of Dudley	Route of former Flood Street (now car park)	Between points SJ and SK.
	Route of former Campbell Street (now car park)	Between points SL and SM.
	Route of former Constitution Hill (now car park)	Between points SN and SP.

SCHEDULE 5

Article 14

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>	<i>(4)</i> <i>Alternative provision (if any)</i>
Metropolitan Borough of Sandwell	Footpath and possible right of way on foot on the western side of the South Staffordshire Junction Railway at Ocker Hill	Between points AA, AB and AG and between points AB and AC	To be temporarily diverted to pass between points AA, AD, AE, AF, AG and AC.
	Possible right of way on foot on the western side of the South Staffordshire Junction Railway at Ocker Hill	Between points AH, AI and AJ	To be temporarily diverted to pass between points AH and AJ.
	Bridleway (Tame Valley Canal towing path)	Between points AK and AL and points AM and AN	None.
	Possible right of way (Walsall Canal towing path)	Between point AW and AX	None.
	New Road	Between points BA and BB	Temporary footpath between points BC, BD, BE and BF.
	Horseley Road	Between points DA and DB	Temporary footpath between points DC, DD, DE and DF.
	Lower Church Lane	Between points EA and EB	Temporary footpath between points ED, EE, EF and EG.
	Keelinge Street	Between points EB and EC	None.
	Park Lane East	Between points FA and FB	To be temporarily diverted to pass between points FA, FD, FE and FF.
Sedgley Road East	Between points JA and JB	None.	
Possible right of way (Birmingham Canal towing path)	Between points JC and JD	None.	

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>	<i>(4)</i> <i>Alternative provision (if any)</i>
Metropolitan Boroughs of Sandwell and Dudley	Birmingham New Road	Between points KA and KB	None.
Metropolitan Borough of Dudley	Possible right of way (Pensnett Canal towing path)	Between points UA and UB	None.
	Possible right of way (Dudley Canal towing path)	Between points UC and UD	To be temporarily diverted to pass between points UC, UE, UF and UD.
	Possible right of way (Dudley Canal towing path)	Between points VA and VB	To be temporarily diverted to pass between points VA, VC, VD and VB.

SCHEDULE 6

Article 20

LEVEL CROSSINGS ON TRAMROADS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway or other road to be crossed on the level</i>
Metropolitan Borough of Dudley	Tipton Road The Minories (as proposed to be realigned, Work No. 9B) Canal Street (as proposed to be extended, Work No. 12A) The access road to Round Oak Rail (as proposed to be altered, Work No. 12B) Waterfront Way (North) (as proposed to be altered, Work No. 12C) Waterfront Way (South) (as proposed to be realigned, Work No. 12D)

SCHEDULE 7

Article 32

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 shall 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 prejudice to the generality of paragraph 1, the Land Compensation Act 1973⁽³³⁾ shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”, and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”,
- (b) for the word “severance” there shall be substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”,
- (c) for the words “part proposed” there shall be substituted the words “right proposed”, and
- (d) for the words “part is” there shall be substituted the words “right is”.

Adaptation of the 1965 Act

3.—(1) The 1965 Act shall have 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 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 prejudice to the generality of sub-paragraph (1), Part I of the 1965 Act shall apply 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.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which

(33) 1973 c. 26.

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 his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following—

(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Land Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (“the Order”) shall, in relation to that person cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest of land, the acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

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),

shall be modified 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 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply 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 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified 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.

SCHEDULE 8

Article 34

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
Metropolitan Borough of Sandwell	499	Construction access and working space.	Works Nos. 1 and 1B
	500, 502 and 718	Construction access and working space; works for retention of flood storage during construction.	Works Nos. 1, 1B and 1C
	508, 509, 700, 716, 717 and 750	Construction access and working space; temporary diversion of public footpath and of possible right of way on foot.	Works Nos. 1 and 1D
	513 to 515	Working site and construction compound.	The authorised works
	519 to 521, 523 and 702	Construction access and working space.	Work No. 1
	526 and 528	Working site and construction compound.	The authorised works

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
	543	Construction access and working space.	Works Nos. 2 and 2B
	550	Construction access and working space.	Works Nos. 2 and 2D
	552	Construction access, working site and construction compound.	Works Nos. 3 and 3A
	553	Construction access and working space.	Works Nos. 3 and 3B
	632	Construction access and working space.	Works Nos. 3 and 3A
	633 to 636	Construction access and working space.	Works No. 3 and 3A
	638 and 639	Construction access and working space.	Work No. 3
	703	Construction access and working space.	Works Nos. 1, 1E, 2 and 2A
	709	Construction access and working space.	Works Nos. 3 and 3C
	721 and 722	Construction access.	The authorised works
	723	Construction access and working space.	Works Nos. 2 and 2A
Metropolitan Borough of Dudley	573 to 576 and 580	Working site and construction compound.	The authorised works
	606 and 607	Construction access.	Work No. 11
	621	Working site and construction compound.	The authorised works
	623	Construction access and working space.	Works Nos. 12, 12B & 12C
	624	Construction access and working space.	Work Nos. 12, 12C & 12D
	626	Construction access and working space.	Work Nos. 14 and 14A
	628	Working space.	Work No. 14
	647, 649 and 713	Construction access and working space.	Works Nos. 11 and 12

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
	650	Working site and construction compound.	Work No. 11
	725	Construction access and working space.	Works Nos. 3 and 3C
	726	Working site and construction compound.	The authorised works
	728 and 752	Construction access and working space.	Work No. 5
	759 to 765 and 803	Construction access and working space.	Work No. 11
	767	Construction access and working space.	Works Nos. 12 and 12A

SCHEDULE 9

Article 47

TRAFFIC REGULATION

PART 1

PROHIBITION OR RESTRICTION OF WAITING AND LOADING/UNLOADING

TABLE A

No waiting, loading or unloading at any time

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Extent</i>
Metropolitan Borough of Dudley	Tipton Road	Both sides from a point 100 metres north of the imaginary line projecting from the northern kerblines of Castlegate Way (at its junction with Tipton Road) for a length of 55 metres in a northerly direction.
	Castle Hill	Both sides from a point 30 metres east of the imaginary line projecting from the eastern kerblines of Station Drive (at its junction with Castle Hill) to a point 30 metres

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Extent</i>
		west of the western kerbline of Birmingham Street (at its junction with Castle Hill).
	Station Drive	Both sides from its junction with Castle Hill for a length of 50 metres in a northerly direction.
	Birmingham Street (north of Dudley Bus Station)	On the eastern side, from its junction with Castle Hill for a length of 20 metres in a southerly direction. On the eastern side, from its junction with Bourne Street for a length of 20 metres in a southerly direction.
	Birmingham Street (south of Dudley Bus Station)	Both sides, from its junction with King Street for a length of 60 metres in a northerly direction on its eastern side and 70 metres in a northerly direction on its western side.
	King Street	Both sides of the north-western carriageway between its junction with Birmingham Street and the imaginary line projecting from the western kerbline of Flood Street (as existing). Both sides of the south-eastern carriageway between its junction with Hall Street and the imaginary line projecting from the western kerbline of Flood Street (as existing).
	Flood Street (as proposed to be realigned, Work No. 9A)	Both sides for its whole length.
	The Minories (including as proposed to be realigned, Work No. 9B)	Both sides for its whole length.
	Constitution Hill (including as proposed to be extended, Work No. 9C)	Both sides for its whole length.
	Roundabout at the junction of Level Street and The Embankment	Both side of the circulatory carriageway of the roundabout.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Extent</i>
Metropolitan Borough of Dudley—cont	Cottage Street (including the realignment of its western end, Work No. 14B)	Both sides for its whole length.

PART 2

DIRECTION OF TRAFFIC

TABLE B

One way

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Permitted movement</i>
Metropolitan Borough of Dudley	Birmingham Street (north of Dudley Bus Station)	South bound traffic only from its junction with Castle Hill to its junction with Bourne Street.
	Bourne Street	East bound traffic only from its junction with Birmingham Street for a length of 48 metres in an easterly direction.

PART 3

PROHIBITION OF ACCESS

TABLE C

No passage of vehicular traffic except tramcars

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Extent</i>
Metropolitan Borough of Dudley	Birmingham Street (north of Dudley Bus Station)	Along route of proposed tramway from its junction with Castle Hill for a length of 75 metres in a southerly direction. From Dudley Bus Station for a length of 40 metres in a north-westerly direction.

TABLE D

No passage of vehicular traffic

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Extent</i>
Metropolitan Borough of Dudley	Porters Field	At point QC.

SCHEDULE 10

Article 49

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 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land which has been acquired under this Order, or which is held by the Executive and is appropriated or used (or about to be used) by it for the purposes of this Order or for purposes connected therewith; 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 which provide for the payment of compensation) shall 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 shall be entitled to recover from the Executive compensation in respect of expenditure reasonably incurred by him, 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) shall 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,

shall be entitled to recover from the Executive compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his 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, shall not have effect in relation to apparatus as respects which Part III of the 1991 Act applies (including that Part as applied by article 3).

(6) In this paragraph—

“electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984⁽³⁴⁾;

“electronic communications code network” means an electronic communications network within the meaning of the Communications Act 2003⁽³⁵⁾ to which the electronic communications code applies; and

“public utility undertakers” has the same meaning as the Highways Act 1980⁽³⁶⁾.

Apparatus of statutory undertakers, etc, in stopped up streets

2.—(1) Where a street is stopped up under article 13 of this Order (including that article as applied by article 7(6) of this Order) any statutory utility whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provision of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 13 of this Order (including that article as applied by article 7(6) of this Order) 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 and, if reasonably requested so to do by the Executive, shall—

- (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 such position as aforesaid.

(3) Subject to the following provisions of this paragraph, the Executive shall 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 Executive, 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

⁽³⁴⁾ 1984 c. 12; Schedule 2 was amended by the New Roads and Streetworks Act 1991, Schedule 8 paragraphs 113 and 115, and the Communications Act 2003, Schedule 3.

⁽³⁵⁾ 2003 c. 21.

⁽³⁶⁾ 1980 c. 66.

apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) shall 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 shall not 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 shall 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)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) shall not apply where the authorised works constitute major transport works or major highway works for the purposes of Part III of the 1991 Act (including that Part as applied by article 3), but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of costs of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by the Executive 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 III 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 shall not apply for the purposes of the authorised works to the extent that such works are regulated by Part XI 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 shall apply for the purposes of the authorised works, save—

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

(3) The temporary stopping up, alteration or diversion of any highway under article 14 of this Order shall 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 III of the 1991 Act;

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

SCHEDULE 11

Article 58

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF BRITISH WATERWAYS BOARD

1.—(1) For the protection of BW the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Executive and BW, have effect.

Interpretation

(2) In this Part of this Schedule—

“BW” means the British Waterways Board;

“BW’s network” means BW’s network of waterways;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work;

and “construct” and “constructed” have corresponding meanings;

“detriment” means any damage to a waterway or any other property of BW and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of a waterway (including towing paths);
- (b) the erosion of the bed or banks of a waterway, or the impairment of the stability of any works, lands or premises forming part of a waterway;
- (c) the deposit of materials or the siltation of a waterway so as to damage the waterway;
- (d) the pollution of a waterway;
- (e) any significant alteration in the water level of a waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of a waterway (including any adverse impact on any site of special scientific interest comprised in BW’s network);
- (g) any interference with the exercise by any person of rights over BW’s network;

“the engineer” means an engineer appointed by BW for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” shall be construed accordingly;

“protective work” means a work constructed under paragraph 7(3)(a);

“specified works” 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 affect the waterway;

“towing path” means the towing path forming part of the waterway;

“waterway” means any canal or inland navigation belonging to or under the management or control of BW, and includes any works, lands or premises belonging to BW, or under its management or control, and held or used by BW in connection with any such canal or inland navigation.

Powers requiring BW’s consent

2.—(1) The Executive shall not under the powers conferred by this Order acquire compulsorily any land of BW or any easement or other right over such land, or use any such land, unless such acquisition or use is with the consent of BW.

(2) The Executive shall not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to a waterway unless such obstruction or interference with such access is with the consent of BW.

(3) The Executive shall not exercise the powers conferred by article 14(1) in relation to any way over land comprised in a waterway unless such exercise is with the consent of BW.

(4) Nothing in article 22 shall authorise the Executive—

(a) to discharge any water directly or indirectly into a waterway; or

(b) to carry out any works to, or make any opening in, or otherwise interfere with, a waterway (including the banks and bed thereof),

except with the consent of BW and on terms that BW may reasonably require, and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(5) The Executive shall not exercise any power conferred by this Order in such a way as to interfere with the supply of water to or the drainage of water from a waterway unless such exercise is with the consent of BW.

(6) The Executive shall not exercise the powers conferred by article 26, or the powers conferred by section 11(3) of the 1965 Act, in relation to a waterway unless such exercise is with the consent of BW.

(7) The Executive shall not exercise the powers conferred by sections 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 10 to this Order, so as to divert any right of access to a waterway, but such right of access may be diverted with the consent of BW.

(8) The consent of BW pursuant to sub-paragraphs (1) to (7) and the approval of plans under paragraph (4) shall not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 22 may include conditions—

(a) specifying the maximum volume of water which may be discharged in any period; and

(b) authorising BW on giving reasonable notice (except in an emergency, when BW may require immediate suspension) to the Executive to require the Executive to suspend the discharge of water or reduce the flow thereof where this is necessary by reason of any operational or environmental requirement of BW.

Vehicles, plant and machinery

3. The Executive shall not use any land or property of BW forming part of a waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer whose consent shall not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to BW, its officers and agents and all other persons lawfully on such land or property.

but nothing in this paragraph shall apply in relation to anything done in accordance with any approval given by BW under paragraph 7.

Closure of towing paths, etc.

4. If in consequence of or in connection with the exercise of the powers of this Order any part of a towing path or any public right of way giving access thereto (“the closed section”) is temporarily closed to persons on foot on cycles or in a wheelchair and there is no way which provides a reasonable alternative, the Executive shall to the reasonable satisfaction of BW, provide in substitution a sufficient and convenient way for such persons between the points of commencement and termination of the closed section for such time as the closure continues.

Fencing

5. Where so required by the engineer the Executive shall to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from a waterway, whether on a temporary or permanent basis or both.

Survey of waterway

6.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the Executive shall bear the reasonable cost of the carrying out by a qualified engineer (the “engineer”), to be approved by BW and the Executive, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and of any land and existing works of the Executive which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the Executive shall—

- (a) on being given reasonable notice (save in case of emergency, when immediate access shall be afforded) afford reasonable facilities to the engineer for access to the site of the specified works and to any land and existing works of the Executive which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the engineer as soon as reasonable practicable with all such information as he may reasonably require with regard to such existing works of the Executive and to the specified works or the method of construction thereof.

(3) The reasonable costs of the survey shall include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule shall apply

with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

- (4) Copies of the survey shall be provided to both BW and the Executive at no cost to BW.

Approval of plans, protective works etc.

7.—(1) The Executive shall before commencing construction of any specified work including any temporary works supply to BW proper and sufficient plans of that work and such further particulars available to it as BW may within 14 days of the submission of the plans reasonably require for the approval of the engineer and shall not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 56 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to BW the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

- (3) When signifying his approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in his reasonable opinion should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment;

and such protective works shall be constructed by the Executive or by BW at the Executive's request with all reasonable dispatch and the Executive shall not commence the construction of a specified work until the engineer has notified the Executive that the protective works have been completed to his reasonable satisfaction.

(4) The Executive shall pay to BW a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3) above, and of carrying out any additional dredging of the waterway necessitated by the exercise of any of the powers of this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving shall be set off against any sum payable by the Executive to BW under this paragraph.

(5) In the event that the Executive fails to complete the construction of, or part of, the specified works BW may, if it is reasonably required in order to avoid detriment, construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the Executive shall reimburse BW all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

8. Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the Executive shall consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by BW on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of the specified works;

and shall have regard to such views as may be expressed by BW to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in

particular to the requirements imposed on BW by section 22 (General environmental and recreational duties) of the British Waterways Act 1995(37) and to the interest of BW in preserving and enhancing the environment of its waterways.

Notice of works

9. The Executive shall give to the engineer 56 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, BW may where appropriate arrange for the publication of notices bringing those works to the attention of users of BW's network.

Lighting

10. The Executive shall provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Construction of specified works

11.—(1) Any specified or protective works shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any requirements made under paragraph 7(3) and paragraph 8;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to BW, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by BW.

(2) Nothing in this Order shall authorise the Executive to make or maintain any permanent works in or over a waterway so as to impede or prevent (whether by reducing the width of a waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which BW is required by section 105(1)(b) and (2) of the Transport Act 1968(38) to maintain the waterway.

(3) Following the completion of the construction of the specified works the Executive shall restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

Prevention of pollution

12. The Executive shall not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of a waterway or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this sub-paragraph.

(37) 1995 c. i.

(38) 1968 c. 73.

Access to work: provision of information

- 13.**—(1) The Executive on being given reasonable notice shall—
- (a) at all times allow reasonable facilities to the engineer for access to a specified work during its construction; and
 - (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.
- (2) BW on being given reasonable notice shall—
- (a) at all times afford reasonable facilities to the Executive and its agents for access to any works carried out by BW under this Part of this Schedule during their construction; and
 - (b) supply the Executive with such information as it may reasonably require with regard to such works or the method of constructing them and the Executive shall reimburse BW's reasonable costs in relation to the supply of such information.

Alterations to waterway

14.—(1) If during the construction of a specified work or a protective work or during a period of 24 months after the completion of those works any alterations or additions, either permanent or temporary, to a waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and BW gives to the Executive reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the Executive shall pay to BW 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 BW in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the Executive to BW under this paragraph.

Maintenance of works

15. If at any time after the completion of a specified work or a protective work, not being a work vested in BW, BW gives notice to the Executive informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the Executive shall, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of BW's fees, etc.

16. The Executive shall repay to BW all fees, costs, charges and expenses reasonably incurred by BW—

- (a) in constructing any protective works under the provisions of paragraph 7(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the Executive and the supervision by him of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger

or accident arising from the construction or failure of the specified works or any protective works; and

- (d) in bringing the specified works or any protective works to the notice of users of BW's network.

Costs of alterations, etc.

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

Making good of detriment; compensation and indemnity, etc.

18.—(1) If any detriment shall be caused by the construction or failure of the specified works or the protective works if carried out by the Executive, the Executive (if so required by BW) shall make good such detriment and shall pay to BW all reasonable expenses to which BW may be put, and compensation for any loss which BW may sustain, in making good or otherwise by reason of the detriment.

(2) The Executive shall be responsible for and make good to BW all costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by BW—

- (a) by reason of the construction of a specified works or a protective work or the failure thereof; or
- (b) by reason of any act or omission of the Executive or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work;

and subject to sub-paragraph (4) the Executive shall effectively indemnify and hold harmless BW from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

(3) The fact that any act or thing may have been done by BW on behalf of the Executive or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of BW or of any person in its employ or of its contractors or agents) excuse the Executive from any liability under the provisions of this paragraph.

(4) BW shall give the Executive reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Executive.

Details of capitalised sums to be provided

19. If BW or the Executive cannot jointly agree the formula by which the capitalised sum is calculated it shall be settled by arbitration in accordance with article 57.

Arbitration

20. Any difference arising between the Executive and BW under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration in accordance with article 57.

PART 2

FOR PROTECTION OF ENVIRONMENT AGENCY

1.—(1) The following provisions of this Part of this Schedule shall apply for the protection of the Environment Agency unless otherwise agreed in writing between the Executive and the Environment Agency.

(2) In this Part of this Schedule—

“damage” shall include scouring, erosion and environmental damage and “damaged” shall be construed accordingly;

“construction” shall include execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall be construed accordingly;

“drainage work” shall mean any watercourse and includes any land which 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 or flood defence;

“the fishery” shall mean any waters containing fish and fish in, or migrating to or from such waters and the spawn, habitat or food of such fish;

“plans” shall include sections, drawings, specifications and method statements;

“specified work” shall mean so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a watercourse 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;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; and

“watercourse” shall include all rivers, streams, ditches, drains, cuts, 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 Executive shall submit to the Environment Agency plans of the work and such further particulars available to it as the Environment Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Environment Agency, or determined under paragraph 12.

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

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused in writing within 56 days 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 Environment Agency may make for the protection of any drainage work or fishery or for the protection of water resources, or for the prevention of flooding or pollution and in the discharge of its environmental and recreational duties.

3. Without prejudice to the generality of paragraph 2, the requirements which the Environment Agency may make under that paragraph include conditions requiring the Executive 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) Any specified work, and all protective works required by the Environment Agency under paragraph 3, shall be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Environment Agency,

and the Environment Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The Executive shall give to the Environment 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 the works comprising a structure in, over or under a drainage work is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Environment Agency may by notice in writing require the Executive, at the Executive's own expense, to comply with the requirements of this Part of this Schedule or (if the Executive so elects and the Environment Agency in writing consents, such consent not to be unreasonably withheld) 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 Environment Agency reasonably requires.

(4) Subject to sub-paragraph (5), 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 Executive, it has failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards their implementation, the Environment Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Executive.

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

5.—(1) The Executive shall 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 and on land owned by the Executive or which it otherwise has control of or on land held by the Executive for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of the Order or is already in existence.

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

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served under sub-paragraph (2) on the Executive, the

Executive has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter made reasonably expeditious progress towards their implementation, the Environment Agency may do anything necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from that person.

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

6. 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 work is otherwise damaged, such impairment or damage shall be made good by the Executive to the reasonable satisfaction of the Environment Agency and if the Executive fails to do so, the Environment Agency may make good the same and recover from the Executive the expense reasonably incurred by it in so doing.

7.—(1) The Executive shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in any fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work, or
- (b) the failure of any such work,

damage to the fishery is caused, or the Environment Agency has reason to expect that such damage may be caused, the Environment Agency may serve notice on the Executive requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If, within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Environment Agency of any damage or expected damage to the fishery, the Executive fails to take such steps as are described in sub-paragraph (2), the Environment Agency may take those steps and may recover from the Executive the expense reasonably incurred by it in doing so.

(4) In any case where immediate action by the Environment Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Environment Agency may take such steps as are reasonable for the purpose, and may recover from the Executive the reasonable cost of so doing provided that a notice specifying those steps is served on the Executive as soon as is reasonably practicable after the Environment Agency has taken, or commenced to take, the steps specified in the notice.

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

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

9.—(1) Without prejudice to the other provisions of this Part of this Schedule, the Executive shall indemnify the Environment Agency from all claims, demands, proceedings, costs, damages or expenses or loss, which may be made or taken against, or recovered from or incurred by the Environment 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 damage to the fishery,
(c) any raising or lowering of the water table in land adjoining the works authorised by this Order or any sewers, drains and watercourses,
(d) any flooding or increased flooding of any such lands, or
(e) inadequate water quality in any watercourse or other surface waters or in any groundwater, which is caused by, or results from, the construction of any of the works or any act or omission of the Executive, its contractors, agents or employees whilst engaged upon the work.

(2) The Environment Agency shall give to the Executive reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Executive which agreement shall not be unreasonably withheld.

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

11. For the purposes of Chapter II of Part II of the Water Resources Act 1991⁽³⁹⁾ (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Environment Agency under this Part of this Schedule with respect to such construction shall be deemed also to constitute an impounding licence under that Chapter or, as the case may be, approval under that section, and the Executive shall not be obliged to serve any notice which would otherwise be required by section 30 of the said Act of 1991 (which relates to the construction of boreholes and similar works in respect of which a licence is not required).

12. Any dispute arising between the Executive and the Environment Agency under this Part of this Schedule (other than a difference as to its meaning or construction) shall, if the parties agree, be determined by arbitration, but shall otherwise 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 Executive or the Environment Agency, after notice in writing by one to the other.

PART 3

FOR PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

1. The following provisions of this Part of this Schedule shall have effect, unless otherwise agreed in writing between the Executive 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 Part of 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 for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of his powers under section 8 of the 1993 Act;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals,

(39) 1991 c. 57.

programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“Network Rail” means Network Rail Infrastructure Limited 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 736 of the Companies Act 1985⁽⁴⁰⁾) 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;

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

“railway property” means any railway belonging to Network Rail and any station, land, works, apparatus and equipment belonging to Network Rail connected therewith and includes any land easement or other property interest held or used by Network Rail 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 affect, railway property.

3.—(1) The Executive shall not exercise the powers conferred by article 26 of this Order or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Executive shall not in the 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 Executive shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(4) The Executive shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 10 to this Order, 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.

(5) Where Network Rail is asked to give its consent pursuant to sub-paragraphs (1), (2), (3) or (4), such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

4.—(1) Where under this Part of 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.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures Network Rail shall—

(a) co-operate with the Executive with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

5.—(1) The Executive shall 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 shall not commence construction of the specified work until such plans as have been approved in writing by the engineer or settled by arbitration.

(40) 1985 c. 6.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the Executive 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 Executive desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Executive 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 Executive.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his 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 train operators using the same (including any relocation, decommissioning 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 shall be constructed by Network Rail or if Network Rail so desires such protective works shall be carried out by the Executive at its own expense, with all reasonable dispatch and the Executive shall not commence the construction of a specified work until the engineer has notified the Executive that the protective works have been completed to his reasonable satisfaction.

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

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5(1);
- (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 as little interference as may be with the conduct of traffic on the railways of Network Rail.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the Executive shall, notwithstanding any such approval, make good such damage and shall 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) The Executive shall give to the engineer no less than 90 days' notice of its intention to commence the construction of a specified work and also, except in emergency (when it shall give such notice as may be reasonably practicable), of its intention to carry out any works for the maintenance or repair of a specified work in so far as such work of repair or maintenance may affect railway property.

7. The Executive shall—

- (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 he may reasonably require with regard to a specified work or the method of constructing it.

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

9.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of a specified work or any protective works under paragraph 5(4), or during a period of 12 months after the commencement of regular revenue-earning tram operations using the new railways comprised in any specified work, in consequence of the construction of a specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Executive reasonable notice of its intention to carry out such alterations or additions, the Executive shall 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 in 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 the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions referred to in paragraph 9(1) a capitalised sum representing such saving shall be set off against any sum payable by the Executive to Network Rail under this paragraph.

10. The Executive shall 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 Executive 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; and
- (b) in respect of the approval by the engineer of plans submitted by the Executive and the supervision by him of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part of this Schedule.
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signaling, 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’s apparatus generated by the operation of the authorised works (including the operation of trams using the new railways comprised in the works) 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 shall apply 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 Executive has been given notice in writing before the approval of those plans of the intention to make such change) other than any change carried out by Network Rail as part of, or in consequence of the authorised works.

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

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

- (a) the Executive shall consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter shall 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 shall make available to the Executive all information in Network Rail's possession reasonably requested by the Executive in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail shall allow the Executive reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to 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 shall not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected in Network Rail's reasonable discretion, and in relation to such modifications paragraph 5(1) shall have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning tram operations on the new railways comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the Executive shall 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) forthwith cease to use (or procure the cessation of use of) the Executive'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 Executive shall afford reasonable facilities to Network Rail for access to the Executive's apparatus in the investigation of such EMI;
- (b) Network Rail shall afford reasonable facilities to the Executive for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail shall make available to the Executive any additional material information in its possession reasonably requested by the Executive in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail shall allow the Executive reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the Executive in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) shall apply 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 sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall 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 57 of this Order to the Institution of Civil Engineers shall 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 Executive informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of railway property, the Executive shall, 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 Executive 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 shall, 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. Before either Network Rail or the Executive provide any new illumination or illuminated traffic sign on or in the vicinity of the authorised works, it shall consult the other and comply with any reasonable requirements of that other party made for the purpose of preventing confusion between such illumination or illuminated sign and any signal or other light used for controlling, directing or securing the safety of traffic on the railway or the authorised tramway as the case may be.

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 shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Executive, be repaid by the Executive to Network Rail.

15.—(1) The Executive shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of 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 thereof; or
- (b) by reason of any act or omission of the Executive or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the Executive shall indemnify 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 Executive or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall 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 Executive from any liability under the provisions of this Part of this Schedule.

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

(3) The sums payable by the Executive under sub-paragraph (1) shall 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 shall 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 shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to 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 of 1993 Act.

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

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there shall not be taken into account 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 Executive under this Part of this Schedule or increasing the sums so payable.

18. The Executive 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 Executive of—

- (a) any railway property shown on the deposited 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.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 No. 927

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises West Midlands Passenger Transport Executive to construct an extension to the Midland Metro light rail system from a junction with the existing Metro line 1 in Wednesbury in the Metropolitan Borough of Sandwell to Brierley Hill town centre in the Metropolitan Borough of Dudley and, for that purpose, compulsorily to acquire land and rights in land. It makes certain ancillary provisions in relation to the existing Metro line 1 and contains a number of protective provisions for the benefit of affected undertakings.

A copy of the deposited plans, the deposited sections and the book of reference referred to in this Order may be inspected at the offices of West Midlands Passenger Transport Executive at Centro House, 16 Summer Lane, Birmingham B19 3SD.