



# Midland Metro (No. 2) Act 1993

## 1993 CHAPTER vi

### PART I

#### PRELIMINARY

#### **1 Short title.**

- (1) This Act may be cited as the Midland Metro (No. 2) Act 1993.
- (2) This Act shall be included among the Acts which may be cited together as the Midland Metro Acts 1989 to 1993.

#### **2 Interpretation.**

- (1) In this Act, unless the context otherwise requires, the several words and expressions to which meanings are assigned by the Acts wholly or partly incorporated herewith have the same respective meanings and—

“Act of 1989” means the Midland Metro Act 1989;

“No. 1 Act of 1992” means the Midland Metro Act 1992;

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

“No. 1 Act of 1993” means the Act for which the Midland Metro Bill was deposited in the Session of Parliament 1992/93;

“authorised railway” means any railway authorised by this Act including, where the context so admits, any railway adapted for use as part of the Metro;

“authorised works” means the works authorised by this Act;

“existing” means existing at the commencement of this Act;

“limits of deviation” means the limits shown on the deposited plans and, where in the case of a work in any street no such limits are shown for that work, the boundaries of the street (including any verge or roadside waste adjoining it);

“Metro” means the light rail transit system comprising the railways authorised by the Midland Metro Acts 1989 to 1993, including such railways designated as tramways, and all works and conveniences provided in

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connection with any of those railways, as that system is constructed, extended or altered from time to time;

“street” has the meaning given by section 329 of the Highways Act 1980 and includes a bridleway, cycle track or footpath as defined in the said section 329 and any way laid out or used as a cycleway;

“tramway” means a railway, or any part of a railway, authorised by the Midland Metro Acts 1989 to 1993 and therein designated as a tramway;

“underground railway” means so much of Work No. 1 and any works or conveniences connected therewith as are constructed in tunnels, whether bored tunnels or tunnels constructed in a manner which necessitates the cutting through or removal of surface soil;

and the following expressions have the same meanings as in the Act of 1989:—

“the Act of 1845”;

“the Act of 1965”;

“enactment”;

“the Executive”;

“land”;

“the railways board”.

- (2) Unless the context otherwise requires, any reference in this Act to a work identified by the number of the work shall be construed as a reference to the work of that number authorised by this Act.
- (3) (a) In this Act, except as mentioned in paragraph (b) below, all distances and lengths stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance and length, and distances between points on a railway shall be taken to be measured along the railway.
  - (b) This subsection does not apply to distances or lengths stated in section 8 (Power to deviate) of this Act.
- (4) Any reference in this Act to rights over land includes reference to the right to do or to place and maintain anything in, on or under the land, or in the air space above its surface.
- (5) Reference in this Act to access to any place includes egress from that place.

### **3 Incorporation or application of enactments.**

- (1) The following provisions of the Act of 1989 (which incorporate or apply enactments for the purposes of that Act) shall, so far as they have effect at the commencement of this Act, have effect as if the references in those provisions to that Act included this Act:—
  - section 3 (Incorporation and application of enactments relating to railways);
  - section 4 (Application of the Tramways Act 1870);
  - section 5 (Application of provisions of the Public Utilities Street Works Act 1950 and Road Traffic Regulation Act 1984); and
  - section 6 (Application of Part I of the Compulsory Purchase Act 1965);
- (2) In accordance with section 20 (2) of the Interpretation Act 1978, the reference in subsection (1) above to section 5 of the Act of 1989 is to that section as amended by

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section 14 (Amendment of Act of 1989 consequential on New Roads and Street Works Act 1991) of the No. 1 Act of 1993.

## PART II

### WORKS

#### **4 Additional works and powers exercisable in Birmingham.**

Subject to the provisions of this Act the Executive may—

- (a) in the lines or situations shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the works in the City of Birmingham specified in Part I of Schedule 1 to this Act, with all necessary works and conveniences connected therewith; and
- (b) in so far as the same are shown on the deposited plans and sections, in the lines or situations and according to the levels so shown, carry out the further works, with all necessary works and conveniences connected therewith, and exercise the further powers, in the City of Birmingham described in Part II of the said Schedule 1.

#### **5 Substituted and additional works and powers exercisable in Birmingham.**

(1) Subject to the provisions of this Act the Executive may—

- (a) in the lines or situations shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the works in the City of Birmingham specified in Part I of Schedule 2 to this Act, with all necessary works and conveniences connected therewith; and
- (b) in so far as the same are shown on the deposited plans and sections, in the lines or situations and according to the levels so shown, carry out the further works, with all necessary works and conveniences connected therewith, and exercise the further powers, in the City of Birmingham described in Part II of the said Schedule 2.

(2) The Executive shall cease to have the powers to make and maintain the part of the work, or to exercise the further powers, in the City of Birmingham specified in Part III of the said Schedule 2.

#### **6 Substituted works and powers exercisable in Solihull.**

(1) Subject to the provisions of this Act the Executive may—

- (a) in the lines or situations shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the works in the Metropolitan Borough of Solihull specified in Part I of Schedule 3 to this Act, with all necessary works and conveniences connected therewith; and
- (b) in so far as the same are shown on the deposited plans and sections, in the lines or situations and according to the levels so shown, carry out the further works, with all necessary works and conveniences connected therewith, and exercise the further powers, in the Metropolitan Borough of Solihull described in Part II of the said Schedule 3.

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- (2) The Executive shall cease to have the powers to make and maintain the works, or to exercise the further powers, in the Metropolitan Borough of Solihull specified in Part III of the said Schedule 3.

**7 Substituted and supplementary works and powers exercisable in Sandwell, Walsall and Wolverhampton.**

- (1) Subject to the provisions of this Act the Executive may—
- (a) in the lines or situations shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the works in the Metropolitan Boroughs of Sandwell, Walsall and Wolverhampton specified in Part I of Schedule 4 to this Act, with all necessary works and conveniences connected therewith; and
  - (b) in so far as the same are shown on the deposited plans and sections, in the lines or situations and according to the levels so shown, carry out the further works, with all necessary works and conveniences connected therewith, and exercise the further powers, in the Metropolitan Boroughs of Sandwell, Walsall and Wolverhampton described in Part II of the said Schedule 4.

- (2) The Executive shall cease to have the powers to make and maintain the works, or to exercise the further powers, in the Metropolitan Boroughs of Walsall and Wolverhampton specified in Part III of the said Schedule 4.

- (3) If so required in any agreement between the local planning authority and the Executive, the Executive shall—
- (a) construct Works Nos. 11 and 11A in substitution for so much of the works authorised by the No. 2 Act of 1992 as is specified in Part IV of Schedule 4 to this Act; and
  - (b) remove any part of the said works authorised by the No. 2 Act of 1992 so specified which is then no longer required;

and thereafter the Executive shall cease to have the power to make and maintain the part of the said works authorised by the No. 2 Act of 1992, or to exercise the further powers in the Metropolitan Borough of Sandwell, which are specified in Part IV of the said Schedule 4.

- (4) Notwithstanding anything in this Act or shown on the deposited plans or the deposited sections, the Executive may, subject to the approval of the Secretary of State and the local planning authority, and with the consent of the owners, lessees and occupiers of the lands in the Metropolitan Borough of Sandwell numbered 1, 2 and 3 on the deposited plans, construct the whole or part of Work No. 11 within the boundaries of those lands in lines or situations, and in accordance with levels, dimensions and descriptions, other than the lines or situations, levels, dimensions and descriptions shown on the deposited plans and the deposited sections or specified in Part I of Schedule 4 to this Act.

**8 Power to deviate.**

In the execution of the authorised works the Executive may, except as may be otherwise provided by this Act, deviate from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation and deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

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## **9 Level crossings.**

- (1) The Executive may carry the authorised railways with a double line across and on the level of each of the highways specified in Schedule 5 to this Act.
- (2) In the exercise of the powers of subsection (1) above, the Executive may alter or interfere with the level of any highway upon which any railway or associated work is to be laid.

## **10 Railway works in streets.**

- (1) Subject to the provisions of this Act the Executive may, for the purpose of providing access to the underground railways, make and maintain permanent openings in so much as is within the limits of deviation for those works of the streets specified in Part I of Schedule 6 to this Act.
- (2)
  - (a) Subject to the provisions of this Act the Executive may, for the purpose of constructing works for the purposes of, or in connection with, the underground railways, enter upon, open, break up and interfere with so much as is within the limits of land to be acquired of the streets specified in Parts I and II of Schedule 6 to this Act and so much of any other highway as is within those limits.
  - (b) Not less than 28 days before entering upon, opening, breaking up or interfering with the surface of any street referred to in paragraph (a) above, the Executive shall post notices stating their intention in conspicuous positions at each end of the part to the street so affected.

## **11 Plans to be approved by Secretary of State.**

- (1) Before constructing any of the authorised railways the Executive shall submit to the Secretary of State for his approval plans, sections and particulars of their proposals concerning—
  - (a) permanent way or track and stations;
  - (b) tunnels, lifts, escalators and stairways;
  - (c) signalling;
  - (d) lighting; and
  - (e) ventilation.
- (2) Any such works shall be constructed and maintained in accordance with plans, sections and particulars approved by the Secretary of State.

## **12 Application of works provisions of Midland Metro Acts.**

- (1) The following provisions of the Act of 1989 and the No. 1 Act of 1992 relating to works shall, subject to the modifications specified in subsection (2) below and any other necessary modifications, apply to the works authorised by this Act as they apply to works authorised by those Acts:—
  - in the Act of 1989—
    - section 9 (Requirements applicable to tramways);
    - section 12 (Provision of accommodation for apparatus);
    - section 15 (Gauge of railways and restrictions on working);
    - section 17 (Transport consultative committee);

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section 18 (Temporary stoppage of highways);  
 section 20 (Stopping up streets and footpaths in case of diversion or substitution);  
 section 21 (Provisions as to repair of streets, footpaths, etc.);  
 section 22 (Underpinning of houses near works);  
 section 23 (Use of sewers, etc., for removing water);  
 section 24 (Attachment of brackets, etc., to buildings for purposes of works); and  
 section 25 (Provisions as to use of electrical energy):

in the No. 1 Act of 1992—

subsection (3) of section 4 (Power to make works);  
 subsections (2) to (7) of section 5 (Further works and powers);  
 section 6 (Subsidiary works);  
 subsection (3) of section 8 (Level crossings); and  
 section 12 (Agreements with British Railways Board).

(2) For the purposes of this section—

- (a) in the said section 9 of the Act of 1989, for the reference in subsection (3) (a) (ii) to section 8 (4) of that Act, there shall be substituted reference to section 5 (4) of the No. 1 Act of 1992 as applied in this Act;
- (b) in the said section 12 of the Act of 1989, for the reference to section 11 of that Act, there shall be substituted reference to section 6 of the No. 1 Act of 1992 as applied in this Act;
- (c) in the said section 18 of the Act of 1989—
  - (i) for the reference to streets within the meaning of that Act, there shall be substituted reference to streets within the meaning of this Act; and
  - (ii) for the reference to the limits of deviation and the deposited plans within the meaning of that Act, there shall be substituted reference to the limits of deviation and the deposited plans within the meaning of this Act;
- (d) in subsection (1) of the said section 23 of the Act of 1989, for the reference to the limits of deviation within the meaning of that Act, there shall be substituted reference to the limits of deviation within the meaning of this Act;
- (e) in the said section 6 of the No. 1 Act of 1992, for the reference to the limits of deviation within the meaning of that Act, there shall be substituted reference to the limits of deviation within the meaning of this Act; and
- (f) in subsection (3) of the said section 8 of the No. 1 Act of 1992, for the reference to subsection (1) of that section, there shall be substituted reference to subsection (1) of section 9 of this Act.

### PART III

#### LANDS

#### 13 Power to acquire lands.

Subject to the provisions of this Act the Executive may enter upon, take and use—

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- (a) so much of the lands delineated on the deposited plans and described in the deposited book of reference as they may require for the purposes of the authorised works or for any purpose connected with, or ancillary to, their undertaking; and
- (b) so much of any land specified in columns (2) and (3) of Schedule 7 to this Act shown on the deposited plans within limits of land to be acquired or used as they may require for the purpose specified in relation to that land in column (1) of that Schedule.

#### **14 Only subsoil or rights to be acquired in certain lands.**

- (1) Notwithstanding section 13 (a) of this Act, the Executive shall not acquire compulsorily under this Act any interest in any part of the lands specified in Schedule 8 to this Act except as provided in subsection (2) of this section.
- (2) For the purposes of making, maintaining, protecting, renewing and using the underground railways, the Executive may enter upon, take and use so much of the subsoil of the lands specified in the said Schedule 8, or purchase compulsorily such new rights in such subsoil, as they may require without being required to acquire any greater interest in or under those lands.
- (3) This section has effect without prejudice to the exercise by the Executive of the powers of section 10 (Railway works in streets) and of section 15 (Temporary possession of lands) of this Act in relation to any of the lands specified in the said Schedule 8.
- (4) For the purposes of this section the subsoil of lands shall not include any such subsoil which is within 9 metres of the level of the surface of the ground or, in the case of a building on the said lands, the level of the surface of the ground adjoining the building or, in the case of a river, dock, canal, navigation, watercourse or other water area, the level of the surface of the adjoining ground which is at all times above water level.

#### **15 Temporary possession of lands.**

- (1) Subject to the provisions of this section the Executive may take temporary possession of and use—
  - (a) any of the land specified in Schedule 7 to this Act which is not within the limits of deviation for any of the authorised works for the provision of working sites and access for construction purposes; and
  - (b) any land within the limits of deviation of any underground railway for the purpose of providing treatment of ground to facilitate the construction of that railway.
- (2) Not less than 28 days before entering upon and taking temporary possession of any land under this section the Executive shall give notice to the owners and occupiers of the land.
- (3)
  - (a) The Executive shall not, without the agreement of the owners and occupiers, remain in possession of any part of any land of which they take temporary possession under this section after a period of 18 months from the completion of the work of construction for which possession was required.
  - (b) Before giving up possession of any such land, the Executive shall remove all temporary works and restore the land to the reasonable satisfaction of its owners and occupiers.

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- (4) The Executive shall not be empowered to purchase compulsorily, or be required to purchase, any land of which they take temporary possession under subsection (1) (a) above.
- (5) (a) The Executive shall compensate the owners and occupiers of any land of which they take temporary possession under this section for any loss or damage which may result to them by reason of the exercise of the powers of this section in relation to that land.
- (b) Nothing in this section shall relieve the Executive from liability to compensate under section 6 or 43 of the Act of 1845 or section 10 (2) of the Act of 1965 as incorporated or applied in this 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 (a) above.
- (6) Every case of compensation to be ascertained under this section shall be ascertained under the provisions of the Land Compensation Act 1961.

## **16 Application of land purchase provisions of Midland Metro Acts.**

- (1) The following provisions of the Act of 1989 and the No. 1 Act of 1992 relating to the acquisition of lands or rights thereover shall, subject to the modifications specified in subsection (2) below and any other necessary modifications, apply for the purposes of this Act to the lands delineated on the deposited plans and described in the deposited book of reference as they apply for the purposes of those Acts to the lands referred to in those provisions:—
- in the Act of 1989—
- section 27 (Extinction of private rights of way);
  - section 28 (Power to acquire new rights);
  - section 29 (Acquisition of part only of certain properties);
  - section 30 (Disregard of recent improvements and interests);
  - section 31 (Set-off for enhancement in value of retained land);
  - section 33 (Correction of errors in deposited plans and book of reference);
  - and
  - Schedule 5—Adaptation of Part I of the Compulsory Purchase Act 1965:
- in the No. 1 Act of 1992—
- section 17 (Acquisition of structures where rights only acquired).
- (2) For the purposes of this section—
- (a) in subsection (2) of the said section 28 of the Act of 1989, for the reference to the works authorised by the Act of 1989, there shall be substituted reference to the works authorised by this Act;
  - (b) in the said section 31 of the Act of 1989, any references to works authorised by the Act of 1989 shall include reference to works authorised by the No. 1 Act of 1992, the No. 2 Act of 1992, the No. 1 Act of 1993 and this Act;
  - (c) in the said section 33 of the Act of 1989, for references to the deposited plans and the deposited book of reference within the meaning of the Act of 1989, there shall be substituted references to the deposited plans and the deposited book of reference within the meaning of this Act;
  - (d) in the said section 17 of the No. 1 Act of 1992, for the references to sections 28 (1) and 29 of the 1989 Act as applying for the purposes of the No. 1 Act of



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1992, there shall be substituted reference to those provisions as applying for the purposes of this Act, and for the reference to section 16 of the No. 1 Act of 1992 there shall be substituted reference to section 14 of this Act.

#### **17 Period of compulsory purchase of lands or rights.**

- (1) The powers of the Executive for the compulsory acquisition of the lands and rights which they are authorised to acquire by this Part of this Act shall not be exercised after the expiration of five years from the passing of this Act.
- (2) The powers of the Executive for the compulsory acquisition of the said lands and rights shall, for the purposes of this section, be deemed to have been exercised if notice to treat has been served in respect of those lands and rights.

### **PART IV**

#### **PROTECTIVE PROVISIONS**

#### **18 Application of protective provisions of Midland Metro Acts.**

- (1) The following protective provisions of the Act of 1989 and the No. 1 Act of 1992 shall, so far as applicable and subject to the modifications specified in subsection (2) below and any other necessary modifications, apply for the purposes of this Act as they apply for the purposes of those Acts—
  - in the Act of 1989—
    - section 36 (Notice to police);
    - section 37 (As to highways, traffic, etc.);
    - section 39 (For protection of British Waterways Board);
    - section 40 (For protection of public sewers);
    - section 41 (For protection of certain statutory undertakers);
    - section 42 (For protection of telecommunications operators); and
    - section 43 (Crown rights);
  - in the No. 1 Act of 1992—
    - section 20 (As to underground works affecting highways);
    - section 21 (For protection of National Rivers Authority); and
    - section 22 (For protection of British Railways Board).
- (2) For the purposes of this section—
  - (a) in the said section 36, after the word “police”, there shall be inserted the words “and to the fire authority”;
  - (b) in the said section 40 of the Act of 1989, paragraph (14) shall not apply to the construction of any authorised railway in land now forming part of, or adjoining, any existing railway of the railways board;
  - (c) in the said section 41 of the Act of 1989—
    - (i) for the reference to statutory undertakers as defined in the Act of 1989 there shall be substituted reference to statutory undertakers as defined in the No. 1 Act of 1993; and

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- (ii) paragraph (16) shall not apply to the construction of any authorised railway in land forming part of, or adjoining, any existing railway of the railways board; and
- (d) in the said section 20 of the No. 1 Act of 1992, for the reference to section 37 of the Act of 1989 as applying for the purposes of the No. 1 Act of 1992, there shall be substituted reference to that provision as applying for the purposes of this Act.

## **19 Removal of human remains.**

- (1) In this section “the specified land” means the land in the City of Birmingham numbered 18 on the deposited plans.
- (2) Before the Executive begin to use any part of the specified land for the construction of any authorised works therein less than 9 metres below the surface of that part of that land they shall remove, or cause to be removed, from that part of the specified land the remains of all deceased persons interred therein in accordance with the following provisions of this section.
- (3) Before any such remains are removed from the specified land the Executive shall give notice in accordance with subsection (4) below of such intended removal.
- (4) Notice under subsection (3) above shall describe the specified land and state the general effect of the following provisions of this section, and shall be given by:—
  - (a) publishing it once in each of two successive weeks in a newspaper circulating in the City of Birmingham; and
  - (b) displaying it in a conspicuous place upon or near to the specified land.
- (5) At any time within 56 days after the first publication of a notice under subsection (3) above, any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the Executive of his intention to undertake the removal of such remains, and thereupon if such remains can be identified, he shall be at liberty to cause such remains to be removed and reinterred in any burial ground or cemetery in which burials may legally take place, or to be removed to and cremated in any crematorium, and, forthwith after such reinterment or cremation, shall provide to the Executive a certificate for the purpose of enabling compliance with subsection (9) below.
- (6) If any person giving such notice as aforesaid fails to satisfy the Executive that he is such personal representative or relative as he claims to be or that the remains in question can be identified, the question shall be determined on the application of either party by the county court, and the court shall have power to make an order specifying who shall remove the remains and as to the payment of the costs of the application.
- (7) The Executive shall defray the reasonable expenses of the removal and reinterment or cremation of such remains.
- (8) If—
  - (a) within the said period of 56 days no notice under subsection (5) above has been given to the Executive in respect of any remains in the specified land; or
  - (b) such notice is given and no application is made under subsection (6) above within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days thereafter; or

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- (c) within 56 days after any order is made by the county court under subsection (6) above any person, other than the Executive, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified;

the Executive shall remove the remains and cause them either to be reinterred in such burial ground or cemetery in which burials may legally take place as the Executive thinks suitable for the purpose, or cremated in such crematorium as the Executive thinks suitable for the purpose:

Provided that if any personal representative or relative has given notice under subsection (5) above and has satisfied the Executive that he is such personal representative or relative as he claims to be and that the remains in question can be identified but does not remove the remains, the Executive shall comply with any reasonable request he may make in relation to the removal and reinterment or cremation of the remains.

- (9) Upon the reinterment or cremation of any remains under this section, a certificate of reinterment or cremation shall be sent to the Registrar General by the Executive giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated.
- (10) The removal of the remains of any deceased person under this section shall be carried out in accordance with any directions that may be given by the Secretary of State.
- (11) Any jurisdiction or power conferred on the county court by this section may be exercised by the district judge of the court.
- (12) Section 25 of the Burial Act 1857 shall not apply to a removal carried out in accordance with this section.

## PART V

### GENERAL

#### **20 Attachment of brackets, etc., to buildings.**

Section 24 (Attachment of brackets, etc., to buildings for purposes of works) of the Act of 1989 (as enacted and as applied by section 11 of the No. 1 Act of 1992, section 11 of the No. 2 Act of 1992, section 8 of the No. 1 Act of 1993 and section 12 of this Act) shall be amended by the insertion at the end of that section of the following:—

- “(2) For the purpose of the provisions of the said section 45 applied by subsection (1) above, consent to the affixing of attachments to a building under subsection (2) of that section shall be deemed to have been withheld if no such consent is received by the Executive before the expiration of the period of 56 days beginning on the date on which the Executive serve on the owner of the building, in accordance with section 285 of the Public Health Act 1936, notice of an application for such consent.”.

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## **21 Arbitration.**

Where under this Act any difference (other than a difference to which the provisions of the Act of 1965 apply) is to be determined by arbitration, then, unless otherwise provided, 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.

## **22 Planning permission.**

- (1) Subject to subsection (2) below, in its application to development authorised by this Act, the planning permission specified in subsection (3) below shall have effect as if the authority to develop given by this Act were limited to development begun within 10 years after the passing of this Act.
- (2) Subsection (1) above shall not apply to the carrying out of any development consisting of the alteration, renewal, maintenance or repair of the authorised works or the substitution of new works therefor.
- (3) The planning permission referred to in subsection (1) above is that granted for development permitted by article 3 of, and Class A in Part 11 of Schedule 2 to, the Town and Country Planning General Development Order 1988 (which permits development authorised by private Act designating specifically both the nature of the development thereby authorised and the land on which it may be carried out).