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STATUTORY INSTRUMENTS

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**1994 No. 1761**

**The Wirral Tramway Light Railway Order 1994**

**Citation and commencement**

1. This Order may be cited as the Wirral Tramway Light Railway Order 1994 and shall come into force on 1st July 1994.

**Interpretation**

2.—(1) In this Order, unless the context otherwise requires—

“the Act of 1845” means the Railways Clauses Consolidation Act 1845<sup>(1)</sup>;

“the Act of 1991” means the New Roads and Street Works Act 1991<sup>(2)</sup>;

“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 borough” means the Metropolitan Borough of Wirral;

“carriageway” has the same meaning as in the Highways Act 1980<sup>(3)</sup>;

“the Council” means the Council of the borough;

“the deposited plans” and “the deposited sections” mean respectively the plans and sections deposited in respect of the application for this Order with the Department of Transport;

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

“the limits of deviation” mean the limits so shown on the deposited plans;

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

“reserved track tramway” means any section of a street tramway laid along part of a street which vehicles other than tramcars are deterred or prevented from using;

“the scheduled works” means the works specified in Schedule 1 to this Order;

“street” means a street within the meaning of section 48 of the Act of 1991, together with land on the verge of a street, between two carriageways and includes part of a street;

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

“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

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(1) 1845 c. 20.  
(2) 1991 c. 22.  
(3) 1980 c. 66.

(b) whether the uppermost surface of the rails is level with, or raised above, the surrounding surfaces of the street;

“telecommunication system” has the meaning given by section 4 of the Telecommunications Act 1984(4);

“traffic sign” has the meaning given by section 64 of the Road Traffic Regulation Act 1984(5);

“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 any railway which is laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

“undertaker” means the Council and any lessee under Article 26 (Power to lease tramway system) below to the extent so provided by that article.

(2) Unless the context otherwise requires, any reference in this Order 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 Order.

(a) (3) (a) Except as mentioned in paragraph (b) below, all distances and lengths stated in any description of works or powers shall be construed as if the words “or thereabouts” were inserted after each such distance and length, and distances between points on the tramway shall be taken to be measured along the tramway.

(b) This paragraph does not apply to distances or lengths stated in the following provisions of this Order:—

Article 5 (Power to deviate);

Article 15 (Gauge of tramway and restrictions on working).

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

### **Incorporation and application of enactments relating to railways**

**3.—**(1) The provisions of the Act of 1845 (except sections 7 to 9, 11 to 23, 30 to 44, 46 to 57, 59 to 62, 86, 94, 95, 103 to 105, 115 to 124 and 138), so far as they are applicable for the purposes and are not inconsistent with or varied by the provisions of this Order, are incorporated with and form part of this Order, and this Order shall be deemed to be the special Act for the purposes of those provisions.

(2) In the provisions incorporated by paragraph (1) above—

(a) the expression “the company” means the undertaker;

(b) section 58 of the Act of 1845 (company to repair roads used by them) shall apply except for the words from “and if any question” to the end.

(3) The provisions of the Regulation of Railways Acts 1840 to 1893, except the provisions of the Regulation of Railways Act 1871(6) and section 1 of the Regulation of Railways Act 1889(7), shall not apply in relation to the authorised tramway.

(4) Section 42 of the Road and Rail Traffic Act 1933(8) shall not apply to the authorised tramway.

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(4) 1984 c. 12.

(5) 1984 c. 27.

(6) 1871 c. 78.

(7) 1889 c. 57.

(8) 1933 c. 53.

### **Power to construct works**

4.—(1) The undertaker may construct and maintain the tramways described in Schedule 1 to this Order.

(2) Subject to article 5 (Power to deviate) below, the scheduled works shall be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (5) below, the undertaker may within the limits of deviation 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) works required for, or in connection with, the control of traffic on the authorised tramway;
- (b) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (c) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (d) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (e) works for the benefit or protection of the premises affected by the scheduled works.

(4) Subject to paragraph (5) below, the undertaker may within the limits of deviation 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) Paragraphs (3) and (4) above shall not authorise the carrying out or maintenance of works to alter the course of, or otherwise interfere with, navigable rivers or watercourses.

### **Power to deviate**

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

- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation for that work shown on those plans; and
- (b) deviate vertically from the levels shown on the deposited sections to any extent not exceeding 0.5 metres.

(2) The undertaker may in constructing or maintaining any of the authorised tramroads or 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
- (d) double or single lines of rails in lieu of interlacing lines.

(3) The power in paragraph (2) above 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.

### **Plans to be approved by Secretary of State before works commenced**

6.—(1) Before constructing the authorised tramway the undertaker shall submit to the Secretary of State for his approval plans, sections and particulars of their proposals concerning—

- (a) permanent way or track;
- (b) signalling; and
- (c) lighting.

(2) Any such works shall be constructed and maintained in accordance with such plans, sections and particulars approved by the Secretary of State.

(3) The undertaker shall submit for the approval of the Secretary of State details of their proposals for the tramcars to be used on the authorised tramway and any tramcars so used shall be constructed and maintained in accordance with particulars approved by the Secretary of State.

### **Power to keep apparatus in streets**

7.—(1) The undertaker may, for the purposes of or in connection with the construction, maintenance and use of any authorised street tramway, place and maintain in any street along which the tramway is laid any work, equipment or apparatus including, 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 Act of 1991;
- (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989(9); and
- (c) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

### **Power to execute street works**

8. The undertaker may, for the purpose of exercising the powers conferred by article 7 (Power to keep apparatus in streets) above and the other provisions of this Order, enter upon any street along which any authorised street tramways are laid 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.

### **Agreements with street authorities**

9.—(1) A street authority and the undertaker may enter into agreements with respect to:—

- (a) the construction of any new street (including any structure carrying the street over or under a tramroad) under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a tramroad;
- (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 works referred to in article 8 (Power to execute street works) above.

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

- (a) provide for the street authority to carry out on behalf of the undertaker 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.

### **Mode of construction and operation of tramway**

**10.**—(1) The authorised street tramways (other than any reserved track tramways) shall be so constructed and maintained as to ensure that the uppermost surface of the rails is level with the surrounding surfaces of the street in which they are laid.

- (a) (2) (a) Where the authorised street tramways have been constructed in the aforementioned manner, works for the purpose, or having the effect, of altering the level of any part of a street in which the authorised street tramways are situated shall not be carried out without the consent of the undertaker.
- (b) Consent under subparagraph (a) above may be given subject to such reasonable terms and conditions as the undertaker may require, but shall not be unreasonably withheld, and any difference arising under this paragraph 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.

### **Traffic control**

**11.**—(1) The undertaker may, for the purposes of, or in connection with the operation of, the authorised street tramways, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the Road Traffic Regulation Act 1984 (“the 1984 Act”) or of a character authorised by the Secretary of State on or near any street along which the authorised street tramways are laid.

(2) The undertaker shall consult with the traffic authority as to the placing of signs.

(3) 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 the authorised street tramways are laid shall consult with the undertaker as to the placing of any traffic sign which would affect the operation of the authorised street tramways.

(4) Tramcars shall be taken to be public service vehicles for the purposes of section 122(2)(c) of the 1984 Act.

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

### **Restoration of streets if tramway discontinued**

**12.** If the undertaker 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 the 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 to as good a condition as that in which it was before the tramway was laid.

### **Level crossings**

**13.**—(1) The undertaker may, in the construction of the authorised tramway, carry the same across and on the level of the streets specified in Schedule 2 to this Order.

- (a) (2) (a) On completion of the authorised tramway the undertaker shall provide traffic signs in or near any street along or across which the authorised tramway is laid to give warning to other traffic of the presence of the tramway.

(b) The places at which the traffic signs are displayed shall be such as may be approved by the highway authority.

(3) Subject to the consent of the street authority, which shall not be unreasonably withheld, the undertaker may, in the exercise of the powers of this article, alter or interfere with the level of any street upon which the authorised tramway or any associated work is to be laid.

#### **Provision of accommodation for apparatus**

14. Where the undertaker lays down conduits for the accommodation of cables or other apparatus for the purposes of the authorised tramway or associated traffic control under article 4 (Power to construct works) above, it may, in pursuance of those powers, 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 on such terms and conditions as may be agreed between the undertaker and such other person.

#### **Gauge of tramway and restrictions on working**

15.—(1) The authorised tramway shall be constructed on a gauge of 1, 435 millimetres (4 feet 8.5 inches) and the motive power to be used shall be electrical energy or such other motive power as the Secretary of State may approve.

(2) No part of the authorised tramway shall be used for, or in connection with, the conveyance of passengers without the written permission of the Secretary of State and the undertaker shall comply with the conditions (if any) which the Secretary of State may from time to time prescribe for the safety of persons using the authorised tramway.

(3) Without prejudice to the generality of paragraph (2) above, traction cables of the overhead line equipment of the authorised tramway (supplied with 550 volts direct current with a positive feed), shall, unless otherwise agreed by the Secretary of State, be erected at a height of not less than 5.8 metres (19 feet) above the surface of the ground and, if at any place a height of less than 5.63 metres (18 feet 6 inches) above the surface of the ground is so agreed for a cable, the undertaker shall erect such traffic signs as may be directed by the Secretary of State to give warning of the cable.

#### **Temporary stopping up of streets**

16.—(1) The undertaker, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street to the extent of the limits of deviation and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (2) below, prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians going bona fide 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) The undertaker shall not exercise the powers of this article in relation to any street without the consent of the street authority, but such consent shall not be unreasonably withheld.

#### **Attachment of equipment to buildings for purposes of tramway**

17.—(1) Subject to the following provisions of this article, the undertaker may affix to any building any brackets, cables, wires, insulators and other apparatus required in connection with the authorised tramway.

(2) The undertaker 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.

(3) Where—

- (a) the undertaker 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 apparatus is affixed to a building under this article—

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

(5) The undertaker 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 (4)(b) above; 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 Land Compensation Act 1961<sup>(10)</sup>.

(6) In this article—

“building” includes any structure and a bridge or aqueduct over the street; 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.

### **Power to operate and use tramway system**

**18.**—(1) The undertaker may operate and use the authorised tramway and the other authorised works as a light railway under the Light Railways Act 1896 for the carriage of passengers and goods.

(2) Subject to paragraph (3) below and to article 26 (Power to lease tramway system) below, the undertaker shall, for the purpose of operating the 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) 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) above except to the extent that the exercise of the right is constrained by the presence of the apparatus.

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<sup>(10)</sup> 1961 c. 33.

### **Power to charge fares**

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

### **For protection of telecommunications operators**

20. For the protection of telecommunications operators the following provisions shall, unless otherwise agreed in writing between the undertaker and the telecommunications operators concerned, apply and have effect:—

- (a) in this article expressions defined in the Telecommunications Act 1984 have the same meanings as in that Act;
- (b) the temporary stopping up or diversion of any street under article 16 (Temporary stopping up of streets) above shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code to maintain any apparatus which, at the time of the stopping up or diversion, is in that street.

### **For protection of public electricity suppliers**

21.—(1) In this article “apparatus” means any electric line or electrical plant as respectively defined by section 64 of the Electricity Act 1989.

(2) Nothing in this Order shall prejudice or affect the rights of any public electricity supplier, within the meaning of Part I of the Electricity Act 1989, in any apparatus belonging to them, or for the maintenance of which they are responsible, or any structure for the lodging therein of apparatus, being any apparatus or structure situate in, over or under lands in or upon or near to which the authorised tramway or any part thereof may be constructed.

(3) Before commencing any works authorised by this Order under or over or which will or may affect any apparatus belonging to a public electricity supplier or for the maintenance of which a public electricity supplier is responsible the undertaker shall give to the public electricity supplier not less than 28 days notice in writing accompanied by a plan and section of the proposed work and such work shall be executed only in accordance with the plan and section submitted, and in accordance with such reasonable requirements (including those contained or referred to in an Agreement dated 17th January 1994 and made between the Council of the one part and Manweb plc of the other part) as may be made by the public electricity supplier for the protection of the apparatus, or for securing access thereto.

(4) If by reason or in consequence of the execution or user of any of the works authorised by this Order any damage to any apparatus or any interruption in supply of electricity by a public electricity supplier shall be caused, the undertaker shall bear and pay the cost reasonably incurred by the public electricity supplier in making good such damage or in restoring the supply of electricity and shall make reasonable compensation to the public electricity supplier for any loss sustained by it and indemnify the public electricity supplier from and against all claims in respect of any such damage or interruption.

### **For protection of public gas suppliers**

22. Nothing in this Order shall prejudice or affect the statutory or other rights of any public gas supplier within the meaning of Part I of the Gas Act 1986(11) in or relating to any pipe, main or apparatus belonging to them or for the maintenance of which they are responsible, or any structure for the lodging therein of any pipe, main or apparatus, being any pipe, main or apparatus or structure

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(11) 1986 c. 44.



situate under, over or upon lands in or upon or near to which the authorised tramway or any part thereof is constructed.

### **Power to lop trees overhanging tramway**

**23.**—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised tramway, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the tramway or any apparatus used for the purposes of the tramway; or
- (b) from constituting a danger to passengers or other persons using the tramway.

(2) In exercising the powers in paragraph (1) above, the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2) above, or as to the amount of compensation, shall be determined under Part I of the Land Compensation Act 1961.

### **Removal of obstructions**

**24.**—(1) If any obstruction is caused to tramcars using the authorised tramway by a vehicle waiting, loading, unloading or breaking down on any part of the tramway, the person in charge of the vehicle shall forthwith remove it; and if he fails to do so the undertaker may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the vehicle was put or left so as to become an obstruction to tramcars; or
- (b) any person who was the owner of the vehicle at that time unless he shows that he was not, at that time, concerned in or aware of the vehicle being so put or left.

(2) For the purposes of this article the owner of a vehicle shall be taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of a vehicle at any time, it shall be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicles (Excise) Act 1971<sup>(12)</sup>.

### **Tramcars on tramway deemed public service vehicles**

**25.**—(1) On such day as may be appointed under paragraph (2) below, regulations made, or having effect as if made, under section 25 or 60(1)(k) of the Public Passenger Vehicles Act 1981<sup>(13)</sup> (Regulation of conduct of passengers and lost property) shall have effect as if the tramcars used on the authorised tramway were public service vehicles used in the provision of a local service within the meaning of the Transport Act 1985<sup>(14)</sup>.

- (a) (2) (a) The Council may by resolution appoint a day for the purpose of any regulation mentioned in paragraph (1) above, the day so appointed being fixed in accordance with subparagraph (b) below.
- (b) The Council shall publish in a newspaper circulating in the area in which the authorised tramway is situated, notice—
  - (i) of the passing of any such resolution and of the day fixed thereby; and

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<sup>(12)</sup> 1971 c. 10.  
<sup>(13)</sup> 1981 c. 14.  
<sup>(14)</sup> 1985 c. 67.

- (ii) of the general effect of the enactments for the purposes of which the day has been fixed; and the day so fixed shall not be earlier than the expiration of 28 days from the date of the publication of the notice.
- (c) A photostatic or other reproduction certified by the proper officer of the Council to be a true reproduction of a page, or part of a page, of any newspaper bearing the date of its publication and containing the notice mentioned in subparagraph
- (b) above shall be evidence of the publication of the notice and of the date of publication.

### **Power to lease tramway system**

**26.**—(1) The Council may, with the consent of the Secretary of State grant to another person (“the lessee”) for a period agreed between the Council and the lessee the right to operate the authorised tramway (or any part of it) and such related statutory rights as may be so agreed.

(2) The terms of any agreement made by virtue of paragraph (1) above shall be subject to the approval of the Secretary of State.

(3) Where an agreement is made by virtue of paragraph (1) above references in this Order to the undertaker shall, if and to the extent that the agreement so provides, have effect as references to the lessee.

### **Power to contract for police services**

**27.**—(1) Agreements may be made—

- (a) between the undertaker and the chief officer of police of any police force and the police authority; or
- (b) between the undertaker and the British Railways Board; for making available to the undertaker for the purposes of the operation of its tramway undertaking the services of members of the police force or, as the case may be, members of the British Transport Police Force.

(2) Any such agreement may be made on such terms and subject to such conditions as may be specified in the agreement.

(3) In this article—

- (a) “chief officer of police”, “police authority” and “police force” have the same meaning as in the Police Act 1964<sup>(15)</sup>; and
- (b) the British Transport Police Force means the force organised under the scheme set out in the Second Schedule to the British Transport Police Force Scheme 1963 (Amendment) Order 1992<sup>(16)</sup> (being an order amending that scheme as it was set out in the Schedule to the British Transport Police Scheme 1963 (Approval) Order 1964<sup>(17)</sup>) made under section 69 of the Transport Act 1962<sup>(18)</sup> and as amended by the British Transport Police Force Scheme 1963 (Amendment) Order 1994<sup>(19)</sup>.

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<sup>(15)</sup> 1964 c. 48.

<sup>(16)</sup> S.I. 1992/364.

<sup>(17)</sup> S.I. 1964/1456.

<sup>(18)</sup> 1962 c. 46.

<sup>(19)</sup> S.I. 1994/609.

Signed by authority of the Secretary of State for Transport

30th June 1994

*J. R. Coates*  
An Under Secretary,  
Department of Transport