
STATUTORY INSTRUMENTS

1997 No. 1266

The Greater Manchester (Light Rapid Transit System) (Airport Extension) Order 1997

PART I
PRELIMINARY

Citation and commencement

1. This Order may be cited as the Greater Manchester (Light Rapid Transit System) (Airport Extension) Order 1997 and shall come into force on 21st May 1997.

Interpretation

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

“the 1965 Act” means the Compulsory Purchase Act 1965(1);

“the 1984 Act” means the Road Traffic Regulation Act 1984(2);

“the 1991 Act” means the New Roads and Street Works Act 1991(3);

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

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

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

“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;

“carriageway” has the same meaning as in the Highways Act 1980(4);

“electric line” has the meaning given by section 64(1) of the Electricity Act 1989(5);

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

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

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

“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

(1) 1965 c. 56.
(2) 1984 c. 27.
(3) 1991 c. 22.
(4) 1980 c. 66.
(5) 1989 c. 29.

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;

“the railways board” means the British Railways Board or, as the case may require, any person who pursuant to the Railways Act 1993⁽⁶⁾ succeeds (whether before or after the making of this Order) to any functions of the British Railways Board, or any other person who derives title to any property from the British Railways Board or such successor and holds that property for railway purposes but for the purposes of article 37 does not include Railtrack;

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC 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⁽⁷⁾) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

“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 or any part of them;

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

“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 transit system 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, or raised above, the surrounding surfaces of the street;

“the telecommunications code” means Schedule 2 to the Telecommunications Act 1984⁽⁸⁾;

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

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

“transit system” means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which—

- (a) provide support and guidance for vehicles carried on flanged wheels, and
- (b) are laid in part along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

“the tribunal” means the Lands Tribunal;

“the undertaker” means the Greater Manchester Passenger Transport Executive;

“vehicle” includes mobile traction unit.

(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.

(3) 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.

⁽⁶⁾ 1993 c. 43.

⁽⁷⁾ 1985 c. 6.

⁽⁸⁾ 1984 c. 12.

(4) References in this Order to points identified by letters, with or without numbers, shall be construed as references to the points so marked on the relevant plan.

(5) All distances, directions 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, direction and length, and distances between points on a street tramway or tramroad shall be taken to be measured along the street tramway or tramroad.

Application of enactments relating to railways

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845⁽⁹⁾ shall be incorporated in this Order but shall apply only in relation to the authorised tramroads:—

section 46 (crossing of roads—level crossings);

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 75 (omission to fasten gates);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923⁽¹⁰⁾ and

section 145 (recovery of penalties).

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

“the company” means the undertaker;

“goods” includes anything conveyed on the authorised tramroads;

“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, except where the context otherwise requires, any authorised works ancillary to the authorised tramroads;

“the special Act” means this Order and

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

(3) In section 46 of the said Act of 1845, as incorporated in this Order, for the proviso there shall be substituted the words “Provided always, that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level”.

(4) The application of section 68 of the said Act of 1845 shall not be taken to require any fencing at the junction of an authorised tramroad with an authorised street tramway.

⁽⁹⁾ 1845 c. 20.

⁽¹⁰⁾ 1923 c. 20.

(5) The provisions of the Regulation of Railways Acts 1840 to 1893 shall not apply in relation to the authorised transit system.

(6) The provisions of the Highway (Railway Crossings) Act 1839⁽¹¹⁾ shall not apply in relation to the authorised transit system.

(7) Nothing in this article shall be taken as affecting the application to the authorised tramroads of sections 32 to 34 of the Offences Against the Person Act 1861⁽¹²⁾.

Application of local railway enactments

4.—(1) Any enactment by which any railway or former railway of the railways board situated within the limits of deviation was authorised shall have effect subject to the provisions of this Order.

(2) Nothing in paragraph (1) above shall prejudice any express statutory provision for—

- (a) the protection of the owner, lessee or occupier of any specifically designated property,
- (b) the protection or benefit of any public trustees or commissioners, corporation or other person, specifically named in such provision, or
- (c) the protection of apparatus of water or sewerage undertakers.

Application of 1991 Act

5.—(1) Section 56 (directions as to timing) and section 58 (restrictions following substantial road works) of the 1991 Act shall not apply in relation to any works executed under the power of this Order.

(2) The provisions of the 1991 Act mentioned in paragraph (3) below, which together with other provisions of that Act apply in relation to the execution of street works and any regulations made or code of practice issued or approved under those provisions, shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the undertaker under the powers conferred by this Order whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) above are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and
- all such other provisions as apply for the purposes of the provisions mentioned above.

(4) Nothing in article 14 of this Order shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker shall not by reason of any duty under that article to maintain

⁽¹¹⁾ 1839 c. 45.

⁽¹²⁾ 1861 c. 100.

- a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act,
- (b) have effect in relation to street works as respects which the provisions of Part III of the 1991 Act apply.

PART II

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

- 6.—(1) The undertaker may construct and maintain the scheduled works.
- (2) Subject to article 7 below, the scheduled works may only be constructed in the lines or situations shown on the Order plans and in accordance with the levels shown on the sections.
- (3) Subject to paragraph (5) below, the undertaker 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 and stopping places,
 - (b) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised transit system,
 - (c) works for the strengthening, alteration or demolition of any building or structure,
 - (d) works to alter the position of any street furniture or apparatus, including mains, sewers, drains and cables,
 - (e) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses,
 - (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works, and
 - (g) replacement facilities and works for the benefit or protection of premises affected by the other authorised works.
- (4) Subject to paragraph (5) below, the undertaker 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) Paragraphs (3) and (4) above shall only authorise the carrying out or maintenance of works—
- (a) within the limits of deviation for the scheduled works shown on the Order plans,
 - (b) within the boundaries of any street along which the construction of a street tramway is shown on the Order plans or which has a junction with such a street, and
 - (c) on land specified in columns (1) and (2) of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Schedule.
- (6) For the purposes of section 37 of the Electricity Act 1989(13) (consent for overhead lines) in its application to the installation or keeping installed of any electric line above ground comprised in Work No. 7A, this Order shall take effect as if a consent had been granted under that section in such terms as to permit any such electric line to be installed by the owner of the electric line which

it replaces and for it to be kept installed by him or any successor in title to the line subject to the conditions set out in Schedule 3 to this Order.

(7) Paragraph 23 of the telecommunications code shall apply for the purposes of any works authorised by this Order save in so far as such purposes are regulated by the 1991 Act or any regulations made under that Act.

Power to deviate

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

- (a) deviate laterally from the lines or situations shown on the Order plans within the limits of deviation for that work shown on those plans, and
- (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent not exceeding 3 metres upwards, and
 - (ii) to any extent downwards.

(2) In constructing or maintaining any work or part of a work shown on the Order plans as being situated in a street and for which no limits of deviation are shown on that plan the undertaker may deviate laterally within the boundaries of that street.

(3) 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.

(4) The power in paragraph (3) 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.

Streets

Power to alter layout of streets

8.—(1) The undertaker may alter the layout of any street specified in columns (1) and (2) of Schedule 4 to this Order in the manner specified in relation to that street in column (3) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) above but subject to paragraph (3) below, the undertaker may for the purpose of constructing, maintaining or using any authorised street tramway alter the layout of the street along which the street tramway is or is to be laid and the layout of any street having a junction with such a street and, without prejudice to the generality of the foregoing, the undertaker 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 such kerb, footpath, footway, cycle track or verge,
- (c) 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,
- (d) carry out works for the provision or alteration of parking places,

- (e) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the transit system, and
- (f) make and maintain crossovers, sidings or passing places.

(3) The powers in paragraph (2) above shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

Power to keep apparatus in streets

9.—(1) The undertaker may, for the purposes of or in connection with the construction, maintenance and use of the authorised transit system, place and maintain in any street in which the transit system is or is to be laid and in any street having a junction with such a street 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 1991 Act, and
- (b) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

Power to execute street works

10.—(1) The undertaker may, for the purpose of exercising the powers conferred by article 9 above and the other provisions of this Order, enter upon any street in which the authorised transit system 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.

(2) This article is subject to paragraph 3 of Schedule 10 to this Order.

Permanent stopping up of streets

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, permanently stop up each of the streets specified in columns (1) and (2) of Part I of Schedule 5 to this Order and permanently stop up vehicular rights of access and egress in each of the streets mentioned in columns (1) and (2) of Part II of that Schedule to the extent specified, by reference to the letters and numbers shown on the Order plans, in column (3) of Parts I and II of that Schedule.

(2) No street specified in columns (1) and (2) of Part I of Schedule 5 (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 new street to be substituted for it, and which is specified in relation to it either by reference to the letters and numbers shown on the Order plans or by reference to one of the scheduled works, in either case in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use.

(3) Except so far as may otherwise be agreed with the highway authority concerned, a new street (not being one of the scheduled works) shall be constructed in the lines or situations shown on the Order plans.

(4) Where a street has been the subject of a permanent stopping up under this article—

- (a) all rights of way (or, in the case of a street specified in Part II of Schedule 5 to this Order, all vehicular rights of way) over or along the street so stopped up shall be extinguished, and

(b) the undertaker may, without making any payment but subject to the provisions of sections 77 to 85E of, and Schedules 1 to 3 to, the Railways Clauses Consolidation Act 1845 (which, as incorporated by this Order, relate to minerals under the authorised tramroads), appropriate and use for the purposes of its transit system undertaking so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(5) 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⁽¹⁴⁾.

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

Temporary stopping up of streets

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

(a) divert the traffic from the street, and

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

(2) The undertaker shall provide at all times 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) above, the undertaker may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 5 and in columns (1) and (2) of Schedule 6 to this Order to the extent specified, by reference to the letters and numbers shown on the Order plans, in column (3) to those Schedules.

(4) The undertaker shall not exercise the powers of this article—

(a) in relation to any street specified as mentioned in paragraph (3) above 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.

(5) The temporary stopping up, alteration or diversion of any street authorised by this Order shall not affect any right of any telecommunications operator as provided for in accordance with paragraph 9 of the telecommunications code nor any right of a water or sewerage undertaker as provided for in accordance with sections 158 and 159 of the Water Industry Act 1991⁽¹⁵⁾.

Access to works

13. The undertaker may, for the purposes of the scheduled works, form and lay out means of access or improve existing means of access in such location or locations within the limits of deviation for the scheduled works shown on the Order plans or, where article 7(2) above applies, within the boundaries of the street in question as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

Construction and maintenance of new or altered streets

14.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the undertaker 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.

⁽¹⁴⁾ 1961 c. 33.

⁽¹⁵⁾ 1991 c. 56.

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

(3) Paragraphs (1) and (2) above do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any tramroad of the undertaker.

Construction of bridges and tunnels

15. Any bridge or tunnel to be constructed under this Order for carrying a highway over or under a tramroad shall be constructed 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

16. 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 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

17.—(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 any street or 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 of the works referred to in article 10(1) above.

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

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

Level crossings

18.—(1) The undertaker may construct the authorised transit system so as to carry it on the level across the highways specified in Parts I and II of Schedule 7 to this Order.

(2) The undertaker 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.

(3) 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.

(4) Without prejudice to the generality of article 8 above, the undertaker may in the exercise of the powers of this article alter the level of any highway specified in Schedule 7 to this Order.

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

(6) In this article—

“barrier” includes gate,

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

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

Supplemental

Attachment of equipment to buildings for purposes of transit system

19.—(1) Subject to the following provisions of this article, the undertaker may affix to any building:—

- (a) any brackets, cables, wires, insulators and other apparatus required in connection with the authorised transit system, and
- (b) any lamps, brackets, pipes, electric lines and other apparatus required for the provision of additional or substitute street lighting in consequence of the construction of the authorised transit system.

(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, in the opinion of the undertaker, 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 it 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 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.

(6) 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 (5)(b) above; and any dispute as to a person's entitlement to compensation, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961(16).

(7) 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.

Discharge of water

20.—(1) The undertaker 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 lay down, take up and alter pipes and may, on any land shown on the Order plans or in any street along which any authorised street tramway is laid, make openings into, and connections with, the watercourse, sewer or drain.

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

(5) The undertaker 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(17).

(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, a local authority, a joint planning board, the Commission for the New Towns, an urban development corporation or a harbour authority within the meaning of the Harbours Act 1964(18).
- (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, and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(16) 1961 c. 33.

(17) 1991 c. 57.

(18) 1964 c. 40.

Power to survey and investigate land

21.—(1) The undertaker may for the purposes of this Order—

- (a) survey or investigate any land within the limits of deviation shown on the Order plans or in any street along which any authorised street tramway is authorised to be laid,
- (b) without prejudice to the generality of sub-paragraph (a) above, 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) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes, and
- (d) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (c) above.

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1) above, 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 undertaker—

- (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 to carry out the survey or investigation or to make the trial holes.

(4) No trial holes 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 undertaker 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 Land Compensation Act 1961.

Mode of construction and operation of transit system

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

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

(3) The authorised street tramway (other than any reserved track tramway) 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 it is laid.

(4) In constructing stations and stopping places for the purposes of the authorised transit system the undertaker shall make provision, in so far as it is in the circumstances both practicable and reasonable and without prejudice to any requirement having effect under or by virtue of the Chronically Sick and Disabled Persons Act 1970(19), for the needs of members of the public using the authorised transit system whose mobility is impaired.

Obstruction of construction of transit system

23. Any person who, without reasonable excuse, obstructs another person from constructing any of the 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.

(19) 1970 c. 44.

PART III ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

24.—(1) The undertaker may acquire compulsorily—

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

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

(2) This article is subject to articles 27(2), 30(8), 37(3) and 38(3) below.

(3) The undertaker shall not under the powers of this Order acquire compulsorily any interest in the land numbered 84, 97, 137, 139, 157, 158, 159, 365, 368, 371 and 373 in the book of reference.

Application of Part I of Compulsory Purchase Act 1965

25.—(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(20) 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 subsoil or 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.

Powers to acquire new rights

26.—(1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 24 above as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 8 to this Order), where the undertaker acquires a right over land under paragraph (1) above the undertaker shall not be required to acquire a greater interest in it.

(3) Schedule 8 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 article of a right over land by the creation of a new right.

Rights for Work No. 7A

27.—(1) The undertaker may compulsorily acquire pursuant to article 26 above such easements or other rights as it may consider necessary (hereafter referred to as “the compulsory rights”) to construct and maintain Work No. 7A and to install and keep installed the electric line comprised in that work over the relevant lands and to have access to the relevant lands for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line.

(2) The powers of compulsory acquisition of land conferred by this Order for the purposes of Work No. 7A shall be limited in relation to the relevant lands to the acquisition of the compulsory rights referred to in paragraph (1) above.

(3) In this article, “the relevant lands” means the whole or any part of the lands shown on the Order plans and described in the book of reference numbered 91 to 96, 98 to 122, 127 to 129, 150 to 155 and 597 inclusive.

Powers to acquire subsoil only

28.—(1) The undertaker may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 24 above as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of the subsoil of land under paragraph (1) above the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) above shall not prevent article 32 below from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Rights under or over streets

29.—(1) The undertaker may enter upon and appropriate so much of the surface, subsoil of, or air-space over, any street shown on the Order plans as may be required for the purposes of the authorised works and may use the surface, subsoil and air-space for those purposes or any other purpose connected with or ancillary to its transit system undertaking.

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

(3) The undertaker shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) above 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 Land Compensation Act 1961.

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

- (a) any subway or underground building, or
- (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

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

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 9 to this Order for the purpose specified in relation to that land in column (3) of that Schedule,
- (b) remove any buildings and vegetation from that 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 undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of two years beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 9 to this Order.

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

(5) The undertaker 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) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961.

(7) Without prejudice to article 47 below, 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) above.

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1) above except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 26 above, or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 28 above.

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

(10) In this article “building” includes structure or any other erection.

Compensation

Disregard of certain interests and improvements

31.—(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) above “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

32.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 25 above) 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 undertaker 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 undertaker 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 undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker 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 undertaker 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 undertaker 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 shall pay to 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 undertaker 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 private rights of way

33.—(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 undertaker, whether compulsorily or by agreement, or

(b) on the entry on the land by the undertaker under section 11(1) of the 1965 Act, whichever is sooner.

(2) All private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the Order plans, is required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by the undertaker.

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

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

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990⁽²¹⁾ (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 10 to this Order applies.

(21) 1990 c. 8.

Time limit for exercise of powers of acquisition

34.—(1) The powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 30 above to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the day on which this Order comes into force.

(2) Paragraph (1) above shall not prevent the undertaker remaining in possession of land in accordance with article 30 above after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART IV

OPERATION OF TRANSIT SYSTEM

Application of provisions of 1996 Order

35.—(1) The following provisions of the Greater Manchester (Light Rapid Transit System) (Eccles Extension) Order 1996⁽²²⁾ (“the 1996 Order”) shall apply to the authorised transit system as they apply to the transit system authorised by that Order—

- Article 20 (Power to construct temporary transit systems)
- Article 35 (Power to operate and use transit system)
- Article 36 (Maintenance of approved works, etc.)
- Article 37 (Removal of obstructions)
- Article 38 (Traffic signs)
- Article 40 (Power to lop trees overhanging transit system)
- Article 41 (Trespass on tramroads)
- Article 42 (Power to make byelaws)
- Article 43 (Power to contract for police services)
- Article 44 (Powers of disposal, agreements for operation, etc.)
- Article 45 (Application of landlord and tenant law)
- Article 46 (Jurisdiction of Rail Users’ Consultative Committee)
- Article 47 (Tramcars deemed public service vehicles).

(2) Article 44 of the 1996 Order as applied by paragraph (1) above shall have effect as if, at the end of paragraph (1) of that article, there were inserted the words “and any rights referred to in article 27 (rights for Work No. 7A) of the Greater Manchester (Light Rapid Transit System) (Airport Extension) Order 1997”.

PART V

PROTECTIVE PROVISIONS

Statutory undertakers, etc.

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

For protection of British Railways Board

37.—(1) For the protection of the railways board the following provisions shall, unless otherwise agreed in writing between the undertaker and the railways board, have effect.

(2) In this article—

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

“the architect” means an architect to be appointed by the railways board;

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

“railway property” means any property, works or apparatus held or used by the railways board in connection with the operation of railway or station services;

“the railway station” means the railway station operated by the railways board at Manchester Airport; and

“specified works” means so much of the authorised works as may be situated upon, across, under or over or within 15 metres of, or may in any way affect, railway property within Manchester Airport (including any of the authorised works adjoining the railway station).

(3) The undertaker shall not under the powers of this Order acquire compulsorily any railway property but it may, with the consent of the railways board, which consent shall not be unreasonably withheld but may be given subject to reasonable conditions, acquire such easements or other rights over any railway property referred to in paragraph (1)(a) or (b) of article 24 above as it may reasonably require for any purpose for which that railway property might have been acquired under that provision.

(4) The undertaker shall not exercise the powers of article 21 above or the powers of section 11(3) of the 1965 Act in respect of any railway property except with the consent of the railways board which consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

(a) (5) (a) Except with the consent of the railways board the undertaker shall not in the exercise of the powers of this Order prevent pedestrian or vehicular access to any operational station of the railways board or any other railway property.

(b) The consent of the railways board under this paragraph shall not be unreasonably withheld but may be given subject to reasonable conditions.

(a) (6) (a) The undertaker shall before commencing the construction of the specified works supply to the railways board proper and sufficient plans (including particulars as to the timing of the works) for the reasonable approval of the architect and shall not commence the specified works until plans thereof have been approved in writing by the architect or settled by arbitration.

(b) The approval of the architect under this paragraph shall not be unreasonably withheld or delayed and if within 56 days after such plans have been supplied to the railways board the architect has not intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same.

(a) (7) (a) The railways board may require such modifications to be made in the said plans as may reasonably be required in the interests of the safe and efficient management and operation of the station (including requirements for passenger interchange with other modes of transport in the forecourt and requirements relating to access to, and servicing facilities for, the station) and of railway services.

- (b) In the event that any modifications required by the railways board conflict with a requirement of Railtrack's engineer under paragraph (8) of article 38 below, the requirement of Railtrack's engineer shall prevail.
- (8) The undertaker shall give to the railways board not less than 56 days' notice in writing of its intention to commence the construction of any of the specified works.
- (9) The specified 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,
 - (b) in such manner as to cause as little damage to railway property as may be, and
 - (c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe operation of the railway and station services of the railways board.
- (10) The undertaker shall—
 - (a) at all times afford reasonable facilities to the architect for access to the specified works during their construction, and
 - (b) supply the architect with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.
 - (a) (11) (a) If any alterations or additions, either permanent or temporary, to railway property in which the railways board have an interest are reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof in consequence of the construction of the specified works and the railways board gives to the undertaker reasonable notice of its intention specifying the alterations or additions to be effected, such alterations and additions may be effected by the railways board and the undertaker shall pay to the railways board the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing the increase in the costs which may be expected to be reasonably incurred by the railways board in maintaining, working and, when necessary, renewing any such alterations or additions.
 - (b) The architect shall, in respect of the capitalised sums referred to in this paragraph and paragraph (13)(a) below, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.
 - (c) If the cost to the railways board of maintaining, working or renewing railway property 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 undertaker to the railways board under this paragraph.
- (12) If at any time after the completion of the specified works, not being works vested in the railways board, the railways board give notice to the undertaker informing it that the state of maintenance of the specified works appears to be such as adversely affects the operation of railway property in which the railways board have an interest, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of maintenance as not adversely to affect such railway property.
 - (a) (13) (a) The undertaker shall be responsible for and make good to the railways board all losses (including revenue losses), and reasonable costs, charges, damages and expenses not otherwise provided for in this article (and which would not otherwise be recoverable from a third party) which may be occasioned to or reasonably incurred by the railways board—
 - (i) by reason of the construction or maintenance of the specified works or the failure thereof, of

(ii) by reason of any act or omission of the undertaker or of any persons in their employ or of their contractors or others whilst engaged upon the specified works;

(including costs incurred in approving plans or in employing additional staff and additional costs incurred in maintaining or altering railway property) and the undertaker shall effectively indemnify and hold harmless the railways board from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the railways board on behalf of the undertaker or in accordance with plans approved by the architect or in accordance with any requirement of the architect or under his supervision shall not (if it was done without negligence on the part of the railways board or of any person in their employ or of their contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(b) The railways board shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

(c) In this paragraph references to specified works include reference to specified works as defined in article 38 below.

(14) In the assessment of compensation payable under this article there shall not be taken into account any enhancement of that compensation attributable to any action taken by or any agreement entered into by the railways board if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining compensation or increased compensation and for the avoidance of doubt any reference in this paragraph to compensation shall be deemed to relate to any payment due to the railways board under this article.

(15) Unless otherwise agreed in writing between the undertaker and the railways board all the rights and obligations of the railways board, whether statutory or otherwise, relating to any land of the railways board which is transferred to the undertaker under the powers or in consequence of this Order shall be transferred to the undertaker to the exclusion of the railways board on the date upon which the undertaker enters upon that land.

For protection of Railtrack

38.—(1) For the protection of Railtrack the following provisions shall, unless otherwise agreed in writing between the undertaker and Railtrack, have effect.

(2) In this article—

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

“the engineer” means an engineer to be appointed by Railtrack;

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

“railway property” means any railway of Railtrack and any works, apparatus and equipment of Railtrack connected therewith and includes any land held or used by Railtrack for the purposes of such railway or works, apparatus or equipment; and

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

(a) (3) (a) The undertaker shall not under the powers of this Order acquire compulsorily any railway property but it may, with the consent of Railtrack, which consent shall not be unreasonably withheld but may be given subject to reasonable conditions, acquire such easements or other rights (not being any easement or other right over any railway property

forming part of any railway track or any land within 3 metres of the outer rail of such a track) over any railway property referred to in paragraph (1)(a) or (b) of article 24 above as it may reasonably require for any purpose for which that railway property might have been acquired under that provision.

- (b) The undertaker shall fence off on a temporary and permanent basis the specified works from railway property to the reasonable satisfaction of the engineer where so required by him.

(4) The undertaker shall not exercise the powers of article 21 above or the powers of section 11(3) of the 1965 Act in respect of any railway property except with the consent of Railtrack which consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

- (a) (5) (a) Except with the consent of Railtrack the undertaker shall not in the exercise of the powers of this Order prevent pedestrian or vehicular access to any station of Railtrack or any other railway property.

- (b) The undertaker shall not exercise the powers of sections 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 10 to this Order, in relation to any right of access of Railtrack to railway property but such right of access may be diverted with the consent of Railtrack.

- (c) The consent of Railtrack under this paragraph shall not be unreasonably withheld but may be given subject to reasonable conditions.

- (a) (6) (a) The undertaker shall before commencing construction of the specified works supply to Railtrack proper and sufficient plans for the reasonable approval of the engineer and shall not commence such construction of the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration.

- (b) The approval of the engineer under this paragraph shall not be unreasonably withheld or delayed and if within 56 days after such plans have been supplied to Railtrack the engineer has not intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same.

(7) If within 56 days after such plans have been supplied to Railtrack, Railtrack gives notice to the undertaker that Railtrack desires itself to construct any part of the specified works 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 Railtrack then, if the undertaker desires such part of the specified works to be constructed, Railtrack shall construct the same with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (where appropriate and if given) of the undertaker.

(8) Upon signifying his approval or disapproval 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 specified works to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Railtrack or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by the specified works) and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack or by the undertaker, if Railtrack so desires, with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

- (9) The specified 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,
- (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 to railway property as may be, and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Railtrack or the traffic thereon and the use by passengers of railway property,

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack all reasonable expenses to which it may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(10) The undertaker shall—

- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction, and
- (b) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.

(11) Railtrack shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Railtrack under this section during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of construction thereof.

- (a) (12) (a) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof in consequence of the construction of the specified works, and Railtrack gives to the undertaker reasonable notice of its intention specifying the alterations or additions to be carried out, the undertaker shall pay to Railtrack the reasonable cost thereof including, in respect of permanent alterations and additions a capitalised sum representing the increase in the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions.
- (b) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph (13)(a) below, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.
- (c) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Railtrack under this paragraph.

(13) The undertaker shall repay to Railtrack all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of the specified works on behalf of the undertaker as provided by paragraph (7) above or in constructing any protective works under the provisions of paragraph (8) above including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works,
- (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all interference, obstruction, danger or accident arising from the construction, maintenance, or failure of the specified works,
- (c) in respect of any special traffic working resulting from any speed restrictions which are necessary as a result of the construction, maintenance or failure of the specified works and which may in the opinion of the engineer be required to be imposed or from the

substitution, suspension or diversion of services which may be necessary for the same reason,

- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary as a result of the specified works or the failure thereof, and
- (e) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of the specified works.

(14) If at any time after the completion of the specified works, not being works vested in Railtrack, Railtrack gives notice to the undertaker informing it that the state of maintenance of the specified works appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of maintenance as not adversely to affect railway property.

(15) All temporary structures, erections, works, apparatus and appliances erected or placed by the undertaker under the powers of the Order upon, over or under any railway of Railtrack shall, as soon as reasonably practicable, be removed by the undertaker at times to be agreed with, and to the reasonable satisfaction of, the engineer and in such a way as to cause as little damage to railway property and as little interference with, or delay or interruption to, the traffic on the railways of Railtrack as may be; and if any damage to railway property or such interference, delay or interruption is caused by any such failure to remove any such temporary structures, erections, works, apparatus or appliances, the undertaker shall forthwith make good such damage and pay to Railtrack the reasonable costs and expenses to which it may be put and reasonable compensation for any loss which it may sustain by reason of such damage, interference, delay or interruption.

(16) If it is necessary for the protection and safety of railway property for Railtrack to purchase any minerals for the support of such property or to pay compensation for any minerals to be left unworked for the support thereof and the specified works also derive support from such minerals, the undertaker shall repay to Railtrack a reasonable proportion of the amount paid by Railtrack for or in respect of such minerals and the costs and expenses incurred by Railtrack in relation to any such purchase or payment of compensation.

(17) Before providing any illumination or illuminated traffic sign on or in connection with the specified works in the vicinity of any railway of Railtrack the undertaker shall consult with Railtrack and comply with its reasonable requirements in regard thereto with a view to ensuring that such illumination or illuminated sign could not be confused with any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

(18) Any additional expenses which Railtrack may reasonably incur after giving 56 days' notice to the undertaker in altering, reconstructing or maintaining railway property under any powers existing at the passing of this Order by reason of the existence of the specified works shall be repaid by the undertaker to Railtrack.

(19) The undertaker shall be responsible for and make good to Railtrack all reasonable costs, charges, damages and expenses not otherwise provided for in this article which may be occasioned to or reasonably incurred by Railtrack—

- (a) by reason of the construction or maintenance of the specified works or the failure thereof, or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the specified works,

and the undertaker shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by Railtrack on behalf of the undertaker 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 Railtrack or of any person

in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(20) Railtrack shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

(21) In the assessment of compensation payable under this article there shall not be taken into account any enhancement of that compensation attributable to any action taken by or any agreement entered into by Railtrack if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining compensation or increased compensation and for the avoidance of doubt any reference in this paragraph to compensation shall be deemed to relate to any payment due to Railtrack under this article.

(22) Section 42 (for further protection of British Railways Board) of the Greater Manchester (Light Rapid Transit System) Act 1988⁽²³⁾ shall have effect with the substitution of references to Railtrack for references to the railways board and as if the references therein to the light rapid transit system and to works authorised by that Act included references to the authorised works and to any parts of the railways of Railtrack transferred to, and vested in, the undertaker by agreement with Railtrack under this Order.

(23) The undertaker and Railtrack may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the Order 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 Railtrack relating to any railway property.

For protection of Environment Agency

39.—(1) For the protection of the Environment Agency (in this article referred to as “the Agency”) the following provisions shall, unless otherwise agreed in writing between the undertaker and the Agency, have effect.

(2) Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991⁽²⁴⁾ or any byelaws made under that Act or the Land Drainage Act 1991⁽²⁵⁾ in relation to anything done under or in pursuance of this Order.

- (a) (3) (a) Before carrying out any works under the powers of this Order involving the erection or raising of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991 or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow of any such watercourse in, under or through any land held for the purposes of or in connection with the authorised transit system the undertaker shall furnish to the Agency proper and sufficient plans thereof for the approval of the Agency and shall not carry out the said works until the said plans have been approved in writing by the Agency.
- (b) The approval of plans furnished under this paragraph shall not be unreasonably withheld and if, within two months of such plans being supplied to the Agency, the Agency does not indicate in writing its disapproval and the grounds of its disapproval, it shall be deemed to have approved the plans as supplied.

⁽²³⁾ 1988 c.i.

⁽²⁴⁾ 1991 c. 57.

⁽²⁵⁾ 1991 c. 59.

(c) For the purposes of this paragraph, “plans” includes sections, drawings, specifications, calculations and descriptions.

(a) (4) (a) Any culvert or any structure designed to contain or divert the flow of any watercourse situated within any land held for purposes of or in connection with the authorised transit system, whether constructed under the powers of this Order or in existence prior to the making hereof, shall be maintained by the undertaker in good repair and condition and free from obstruction.

(b) Nothing in this paragraph shall have the effect of requiring the undertaker to carry out works of maintenance in respect of any culvert or structure which the Agency or any other person are liable to maintain.

(5) If any obstruction is erected or raised or any culvert is constructed, altered or replaced in contravention of this article the undertaker shall upon receiving notice from the Agency take such action as may be necessary to remedy the effect of the contravention to the Agency’s satisfaction and in default the Agency may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the undertaker as a debt due from them to the Agency.

Minerals

40. Nothing in this Order shall affect the right of any person entitled to any mine or minerals of any description whatsoever under a street along which any authorised street tramway is laid to work the mine or get the minerals; but this shall not affect any liability (whether civil or criminal) of the person so entitled in respect of damage to the authorised street tramway resulting from the exercise of any such right.

Saving for highway authorities

41. Nothing in this Order shall affect any power of a highway authority to widen, alter, divert or improve any highway along which a street tramway is laid.

Arrangements with highway authorities

42.—(1) The following provisions shall, unless otherwise agreed in writing between the undertaker and the highway authority concerned, have effect.

(2) In this article—

“highway” means a street vested in, or repairable or maintainable by, the highway authority but excluding the M56 and the M63;

“highway operations” means the construction of any part of the authorised works which will involve interference with a highway or the traffic in a highway and any temporary stopping up, alteration or diversion of a highway;

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

(3) Wherever in this article provision is made with respect to the approval or consent of the highway authority, that approval or consent shall be in writing and may be given subject to such reasonable terms and conditions as the highway authority may require in the interests of safety and in order to minimise inconvenience to persons using the highway, but shall not be unreasonably withheld.

(4) Prior to seeking approval under paragraph (5) below, the undertaker shall consult the highway authority concerned as to any works and changes in the management of the highway network which may be required to ensure the effective integration of the authorised transit system with other forms

of highway traffic and, within 28 days of being requested in writing by the undertaker so to do, the highway authority shall provide the undertaker with its opinion on the subject.

- (a) (5) (a) Without prejudice to the application of sections 59 and 60 of the 1991 Act (duty of street authority to co-ordinate and undertakers to co-operate) before commencing any highway operations, the undertaker shall submit to the highway authority for its approval proper and sufficient plans and shall not commence the highway operations until such plans have been approved or settled by arbitration.
 - (b) If, within 56 days after any plans have been submitted to a highway authority under subparagraph (a) above, it has not intimated its disapproval and the grounds of disapproval, it shall be deemed to have approved them.
 - (c) In the event of any disapproval of plans by a highway authority under this paragraph, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it shall be deemed to have approved them.
- (6) In submitting plans under paragraph (5) above, the undertaker shall—
- (a) ensure that the design of any lighting for new station areas is such as not to cause confusion to highway users operating under normal highway lighting,
 - (b) ensure that the design and positioning of any poles and brackets required for overhead line equipment and the design of foundations, platforms, road islands, substations, electric lines and other apparatus are compatible, so far as reasonably practicable, with street furniture vested in the highway authority, and
 - (c) ensure that the design of any traffic signalling system for the authorised transit system is fully compatible with traffic signalling for other traffic users whilst achieving priority signalling for the authorised transit system wherever practicable.
- (7) Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction shall be given by the highway authority to the contractors, servants or agents of the undertaker regarding the highway operations without the prior consent in writing of the undertaker.
- (8) The highway authority shall not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions pursuant to this article.
- (9) To facilitate liaison with the undertaker, the highway authority concerned shall provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker respecting highway operations.
- (10) So much of the authorised works as forms part of or is intended to become public highway or part of any such highway and which are not street works as respects which the provisions of Part III of the 1991 Act apply shall be completed in accordance with the reasonable requirements of the local highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration.
- (11) The undertaker shall not, except with the consent of the highway authority, alter or interfere with any sanitary convenience, refuge, sewer, drain, lamp column, traffic sign, bollard, bin for refuse or road materials or apparatus connected therewith, or any other property or work belonging to, or under the jurisdiction or control of, the highway authority on or under any highway or repairable by them or the access thereto.
- (12) The undertaker shall not, except with the consent of the highway authority, deposit any soil or materials or stand any vehicle or plant on or over any highway so as to obstruct or render less safe the use of the highway by any person or, except with the like consent, deposit any soil or materials on any highway except within a hoarding.

(13) The undertaker shall, if reasonably so required by the highway authority, provide and maintain during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the authorised works, temporary ramps for vehicular traffic or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with the standards recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs Regulations and General Directions 1994⁽²⁶⁾ in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

(14) The undertaker shall not place any hoardings on any part of any highway except for such period and in such manner as may be reasonably necessary.

(15) The undertaker shall indemnify the highway authority against any claim which may arise as a result of any subsidence of, or damage to, any highway or any sanitary convenience, refuge, sewer, drain, lamp column, traffic sign, bollard, bin for refuse or road materials or apparatus connected therewith, or any other property or work belonging to, or under the jurisdiction or control of, the highway authority on or under any highway, or maintainable by them, which may be caused by, or in consequence of, any act or default of the undertaker, its contractors, servants or agents.

(16) Unless otherwise agreed between the parties any difference arising between the undertaker and the highway authority under this article (other than a difference as to its meaning or construction) shall be determined by arbitration.

PART VI

MISCELLANEOUS AND GENERAL

Amendment of existing enactments

43.—(1) Work No. 10A and Work No. 10B (tramroads in Trafford) of the Greater Manchester (Light Rapid Transit System) (No. 2) Act 1990⁽²⁷⁾ shall cease to have effect.

(2) Article 36 (maintenance of approved works, etc.) of the Greater Manchester (Light Rapid Transit System) (Eccles Extension) Order 1996⁽²⁸⁾ shall be amended by the substitution of “Health and Safety Executive” for “Secretary of State.”

(3) Article 44 (powers of disposal, agreements for operation, etc.) of the Greater Manchester (Light Rapid Transit System) (Eccles Extension) Order 1996 shall be amended by the omission from subsection (1) of the words “and any rights referred to in article 20”.

Disclosure of confidential information

44. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 21 above, and
- (b) discloses to any person any information obtained there 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.

⁽²⁶⁾ S.I. 1994/1519.

⁽²⁷⁾ 1990 c. xxiii.

⁽²⁸⁾ S.I. 1996/2714.

Certification of plans, etc.

45. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections and the Order plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, sections and Order 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

46.—(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.

(3) For the purposes of section 7 of the Interpretation Act 1978(**29**) 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) above 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

47. 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.

Arbitration

48. Unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) 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 for the time being of the Institution of Civil Engineers.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Signed by Authority of the Secretary of State for Transport

30th April 1997

A S D Whybrow
Head of Traffic Policy Division,
Department of Transport