
STATUTORY INSTRUMENTS

2005 No. 120

The Merseytram (Liverpool City Centre to Kirkby) Order 2005

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Merseytram (Liverpool City Centre to Kirkby) Order 2005 and shall come into force on 11th February 2005.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961⁽¹⁾;

“the 1965 Act” means the Compulsory Purchase Act 1965⁽²⁾;

“the 1984 Act” means the Road Traffic Regulation Act 1984⁽³⁾;

“the 1990 Act” means the Town and Country Planning Act 1990⁽⁴⁾;

“the 1991 Act” means the New Roads and Street Works Act 1991⁽⁵⁾;

“the 1992 Act” means the Transport and Works Act 1992;

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

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

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

“the authorised tram system” means the tram system (consisting of the authorised street tramways and the authorised tramroads) authorised by this Order, or any part of that system;

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

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

“carriageway” has the same meaning as in the Highways Act 1980⁽⁶⁾;

“cycle track” means a way over which the public have a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988)⁽⁷⁾ with or without a right of way on foot;

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1984 c. 27.
(4) 1990 c. 8.
(5) 1991 c. 22.
(6) 1980 c. 66.
(7) 1988 c. 52.

“electric line” has the meaning given by section 64(1) of the Electricity Act 1989⁽⁸⁾;

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

“the limits of deviation” means the limits of lateral deviation for the scheduled works mentioned in article 6(1)(a) and (2);

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

“Merseytravel” means the Merseyside Passenger Transport Executive;

“occupier” means a person occupying land under a tenancy for a period of more than one month (not being a statutory tenant within the meaning of the Rent Act 1977⁽⁹⁾ or the Rent Agriculture Act 1976⁽¹⁰⁾);

“the Order limits” means the permanent limits and the temporary limits;

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

“parking place” has the same meaning as in section 32 of the 1984 Act;

“the permanent limits” means the limits of deviation and of land to be acquired or used and the limits of additional land to be acquired or used as shown on the works and land plans, described in the book of reference and (in the case of the additional land) specified in columns (1) and (2) of Schedule 2 to this Order;

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

“the sections” means the sections included in the works and land plans;

“street” includes part of a street;

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

“street tramway” means any part of a tram 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 temporary limits” means the limits of land to be used temporarily as shown on the works and land plans, described in the book of reference and specified in columns (1) and (2) of Schedule 9 to this Order;

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

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

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

“tram services” means passenger services utilising the authorised tram system;

“tram system” means a system of transport consisting of a street tramway or a tramroad or any combination of those modes of transport;

(8) 1989 c. 29.

(9) 1977 c. 42. See section 2(1) and Schedule 1, as amended by the Housing Act 1980 (c. 51), sections 76 and 153(2) and Schedule 26, and the Housing Act 1988 (c. 50), section 39(1).

(10) 1976 c. 80. See section 4, as amended by the Rent Act 1977, section 155 and Schedule 23, and the Housing Act 1980, section 76(3).

“the tribunal” means the Lands Tribunal;

“vehicle” includes mobile traction unit; and

“the works and land plans” means the plans and sections certified by the Secretary of State as the works and land plans for the purposes of this Order and references to land shown on those plans are references to land so shown in pursuance of rule 12(5) of the Applications Rules.

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

(3) 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.

(4) References in this Order to points identified by letters, with or without numbers, or by numbers, shall be construed as references to the points so marked on the works and land plans or, in the case of Schedule 10, to the points so marked on the traffic regulation order plans.

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

Application of enactments relating to railways

3.—(1) The provisions of the Regulation of Railways Acts 1840 to 1893 shall not apply in relation to the authorised tram system.

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

(3) 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 1991 Act

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

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the Highways Act 1980⁽¹³⁾ (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings).

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

(3) The following provisions of the 1991 Act shall not apply in relation to any works executed under the powers of this Order—

section 56 (directions as to timing);

section 56A (power to give directions as to placing of apparatus);

section 58 (restrictions following substantial road works);

⁽¹¹⁾ 1839 c. 45.

⁽¹²⁾ 1861 c. 100.

⁽¹³⁾ 1980 c. 66.

section 58A (restriction on works following substantial streetworks);
 section 73A (power to require undertaker to re-surface street);
 section 73B (power to specify timing etc. of re-surfacing);
 section 73C (materials, workmanship and standard of re-surfacing);
 section 78A (contributions to costs of re-surfacing by undertaker); and
 Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (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 Merseytravel 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.

(5) The provisions of the 1991 Act referred to in paragraph (4) 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); and
 section 77 (liability for cost of use of alternative route);
 and all such other provisions as apply for the purposes of the provisions mentioned above.

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

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and Merseytravel shall not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act; or
- (b) have effect in relation to street works as respects which the provisions of Part III of the 1991 Act apply.

(7) To such extent as is reasonably necessary for protecting the authorised street tramways and their operation and use Merseytravel shall have the same powers as respects reinstatement as a street authority has under section 72 of the 1991 Act.

(8) In its application to the authorised tram system section 93(3) of the 1991 Act shall also permit Merseytravel to make reasonable requirements—

- (a) for allowing it facilities to monitor the execution of the works; and
- (b) for the protection of the authorised tram system.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

5.—(1) Merseytravel may construct and maintain the scheduled works.

(2) Subject to article 6, the scheduled works may only be constructed in the lines or situations shown on the works and land plans and in accordance with the levels shown on the sections.

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

- (a) stations, platforms, junctions and stopping places;
- (b) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised tram system;
- (c) works required for the strengthening, improvement, repair or reconstruction of any street;
- (d) works for the strengthening, alteration or demolition of any building or structure;
- (e) works to alter the position of any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (f) works to alter the course of, or otherwise interfere with rivers, streams or watercourses;
- (g) landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works; and
- (h) facilities and works for the benefit or protection of land or premises affected by the other authorised works.

(4) Subject to paragraph (7), Merseytravel may carry out and maintain 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) Merseytravel may remove any works constructed by it pursuant to this Order which have been constructed as temporary works or which it no longer requires.

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

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

- (a) within the Order limits; and
- (b) within the boundaries of any street along which the construction of a street tramway is shown on the works and land plans, or which has a junction with such a street.

(8) The powers of this article shall not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street along which the construction of a street tramway is shown on the works and land plans without the consent of the street authority but such consent shall not be unreasonably withheld.

(9) Section 109 of the Water Resources Act 1991⁽¹⁴⁾, section 23 of the Land Drainage Act 1991⁽¹⁵⁾ and any byelaws made under those Acts shall not apply to anything done under or in pursuance of this Order.

Power to deviate

- 6.—(1) In constructing or maintaining any of the scheduled works, Merseytravel may—
- (a) deviate laterally from the lines or situations shown on the works and land plans within the Order limits relating to that work shown on those plans; and
 - (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent not exceeding 3 metres upwards; and
 - (ii) to any extent downwards as may be necessary or expedient.

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

(3) Merseytravel may in constructing or maintaining any of the authorised street tramways lay down—

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

(4) The power in paragraph (3) 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.

(5) Merseytravel may in constructing or maintaining any of the authorised street tramways lay down such number of switches and crossings as may be necessary or expedient.

(6) Merseytravel may in constructing and maintaining any of the authorised tramroads provide within the limits of deviation for those tramroads such number of lines of rails and sidings, switchings and crossings as may be necessary or expedient.

(7) Without prejudice to the generality of paragraph (1)—

- (a) in constructing and maintaining Work No. 1 Merseytravel may, to the extent it thinks fit, deviate from the design of the bridges shown on the sections, including by varying the number of any supporting columns or other structures, the distances between them and the height or clearance above the level of the water underneath the bridges; and
- (b) in constructing and maintaining the scheduled works Merseytravel may, to the extent it thinks fit, deviate laterally from their points of commencement and termination shown on the works and land plans.

Designation of works

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

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

⁽¹⁴⁾ 1991 c. 57.

⁽¹⁵⁾ 1991 c. 59.

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

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

Streets

Power to alter layout, etc., of streets

8.—(1) Merseytravel may alter the layout of, and carry out other ancillary works in, any street specified in column (1) of Schedule 4 to this Order in the manner specified in relation to that street in column (2) of that Schedule.

(2) Without prejudice to the specific powers conferred by article 5 or paragraph (1) but subject to paragraph (3), Merseytravel 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, Merseytravel may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, 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 and bus laybys;
- (e) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999⁽¹⁶⁾ and which are carried out in compliance with those Regulations;
- (f) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the tram system; and
- (g) make and maintain crossovers, sidings or passing places.

(3) The powers in paragraph (2) 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) Merseytravel may, for the purposes of or in connection with the construction, maintenance and use of the authorised tram system, place and maintain in any street in which the tram 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) The powers of this article shall not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street along which the construction of a street tramway is shown on the works and land plans without the consent of the street authority but such consent shall not be unreasonably withheld.

(3) In this article—

⁽¹⁶⁾ S.I.1999/1026.

- (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) Merseytravel may, for the purpose of exercising the powers conferred by article 9 or any other provision of this Order, enter upon any street in which the authorised tram 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) The powers of this article shall not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street along which the construction of a street tramway is shown on the works and land plans without the consent of the street authority, but such consent shall not be unreasonably withheld.

Stopping up of streets and extinguishment of rights

11.—(1) Subject to the provisions of this article Merseytravel may, in connection with the construction of the authorised works, stop up each of the streets specified in column (1) of Parts 1 and 2 of Schedule 5 to this Order to the extent specified, by reference to the letters and numbers shown on the works and land plans, in column (2) of Parts 1 and 2 of that Schedule.

(2) No street specified in column (1) of Part 1 of Schedule 5 to this Order (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 unless either—

- (a) the new street to be substituted for it, and which is specified in relation to it by reference to one of the scheduled works or other works in column (3) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route is first provided and thereafter maintained by Merseytravel to the reasonable satisfaction of the street authority between the commencement and termination points of the street to be stopped up, until completion of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 5 to this Order (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the relevant land; and for this purpose “relevant land” means any land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

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

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

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

(b) Merseytravel may appropriate and use for the purposes of the authorised tram system so much of the site of the street as is bounded on both sides by land owned or appropriated by Merseytravel.

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

(7) This article is subject to paragraph 2 of Schedule 11 to this Order.

Temporary stopping up of streets

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

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the generality of paragraph (1), Merseytravel may use any street stopped up under the powers of this article as a temporary working site.

(3) Merseytravel 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.

(4) Without prejudice to the generality of paragraph (1), Merseytravel may exercise the powers of this article in relation to the streets specified in column (1) of Schedule 5 to this Order to the extent specified, by reference to the letters and numbers shown on the works and land plans and set out in column (2) of that Schedule, and in relation to the streets specified in Schedule 6 to this Order.

(5) Merseytravel shall not exercise the powers of this article—

(a) in relation to any street specified as mentioned in paragraph (4) that is not a highway, without first consulting the street authority; and

(b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

Access to works

13. Merseytravel may, for the purposes of the construction or operation of the scheduled works, form and lay out such means of access or improve such existing means of access, to any street in which the authorised tram system is or is to be laid or any street having a junction with such a street, as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

Construction and maintenance of new, altered or diverted 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 between Merseytravel and the highway authority, be maintained by and at the expense of Merseytravel for a period of 18 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(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 Merseytravel for a period of 18 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) do not apply in relation to the structure of any bridge or tunnel carrying a street over a tramroad or carrying a tramroad over a street and except as provided in those paragraphs Merseytravel shall not be liable to maintain the surface of any street in, on, under or over

which the scheduled works shall be constructed, or the immediate approaches to any such street, unless otherwise agreed with the street authority.

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

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

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

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

Construction of bridges and tunnels

15. Any bridge or tunnel to be constructed under this Order for carrying a highway over any authorised tramway or any authorised tramway over a highway 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 Merseytravel abandons the construction of, or 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 Merseytravel may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under any authorised street tramway or authorised tramroad) under the powers conferred by this Order;

- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of any street along or across which a street tramway is laid, or of the structure of any bridge or tunnel carrying a street over or under any authorised street tramway or authorised tramroad;
 - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (e) the execution in the street of any of the works referred to in article 10.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question; and
 - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

New road crossings

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

(2) Merseytravel may provide, maintain and operate at or near any new road crossing such protective equipment as the Health and Safety Executive 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, Merseytravel may in the exercise of the powers of this article alter the level of any highway or road referred to in paragraph (1).

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

(6) In this article—

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

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

Supplemental powers

Attachment of equipment to buildings

19.—(1) Subject to the following provisions of this article, Merseytravel may affix to any building for the time being constructed on any land mentioned in Part 1 of the book of reference, and any building (or replacement of that building) mentioned in Part 2 of the book of reference—

- (a) any brackets, cables, wires, insulators and other apparatus required in connection with the authorised tram 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 tram system.

(2) Paragraphs (3) to (5) and (8) do not apply to any building for the time being constructed on any land referred to in Schedule 8 to this Order.

(3) Merseytravel shall not under this article affix any apparatus to a building without the written 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.

(4) Where—

- (a) Merseytravel 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.

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

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

- (a) any owner for the time being of the building may serve on Merseytravel not less than 56 days' notice requiring Merseytravel at its own expense temporarily to remove the apparatus during any demolition, reconstruction or repair of the building if such removal is reasonably necessary for that purpose; and
- (b) Merseytravel shall have the right as against any person having an interest in the building to use and maintain the apparatus.

(7) Where, in the opinion of Merseytravel, a requirement temporarily to remove any apparatus affixed to a building under this article during any reconstruction, demolition or repair of the building is not reasonably necessary for that purpose, Merseytravel may refer the matter to an arbitrator under article 77, who may either allow the apparatus to be temporarily removed or may order that it shall not be temporarily removed.

(8) Merseytravel 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 (6)(b); 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 1961 Act.

(9) 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 that 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.

Temporary closure of part of Canning Dock, Duke’s Dock, Wapping Basin and Salthouse Dock

20.—(1) In this article “the waterways” means those parts of Canning Dock, Duke’s Dock, Wapping Basin and Salthouse Dock that lie within the Order limits.

(2) Merseytravel may, during and for the purpose of the construction of the authorised works, temporarily close and de-water all or any part of the waterways and divert barges and other boats from all or any part of the waterways.

(3) During the period of the closure referred to in paragraph (2), all rights of navigation along, and any obligations of the British Waterways Board to maintain for navigation, the waterways or part thereof so closed shall be suspended and unenforceable against the British Waterways Board.

(4) Any person who suffers loss by the suspension of any right under this article shall be entitled to be paid compensation by Merseytravel, to be determined in the case of dispute by the tribunal.

Discharge of water

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

(2) Merseytravel 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) Merseytravel 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) Merseytravel 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) Merseytravel 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, or a harbour authority within the meaning of the Harbours Act 1964⁽¹⁸⁾;
- (b) “watercourse” includes all docks, 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.

Safeguarding works to buildings

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

(2) Safeguarding works may be carried out—

⁽¹⁷⁾ 1991 c. 57.

⁽¹⁸⁾ 1964 c. 40.

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

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

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

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

(5) Before exercising—

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

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

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 77.

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

(8) Where—

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

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

(9) Without prejudice to article 76, nothing in this article shall relieve Merseytravel from any liability to pay compensation under section 10(2) of the 1965 Act.

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

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection; and
- (b) “safeguarding works”, in relation to a building, means—

- (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works;
- (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and
- (iii) any works the purpose of which is to secure the safe operation of the tram system or to prevent or minimise the risk of such operation being disrupted.

Power to construct temporary street tramways

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

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

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

(3) The provisions of articles 8(2), 9, 10 and 46 shall apply in relation to temporary street tramways laid under this article as they apply in relation to the authorised street tramways.

Planning permission: supplementary matters

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

(2) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969⁽¹⁹⁾ (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975⁽²⁰⁾, or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act for the purposes of that Part.

(3) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999⁽²¹⁾ as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not be treated as an outline planning permission.

Power to survey and investigate land, etc.

25.—(1) Merseytravel may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits or any building (or replacement of that building) mentioned in Part 2 of the book of reference, any street along which any

⁽¹⁹⁾ S.I. 1969/17.

⁽²⁰⁾ S.I. 1975/148.

⁽²¹⁾ S.I. 1999/1892.

authorised street tramway is authorised to be laid and any street having a junction with such a street;

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

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

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

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

(6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(22).

Mode of construction and operation of tram system

26.—(1) The authorised tram 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 street tramway and authorised tramroad shall be constructed on a nominal gauge of 1,435 millimetres.

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

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

Obstruction of construction of authorised works

27. 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.

Removal of human remains

28.—(1) In this article “the specified land” means the land in the City of Liverpool numbered 433 and 434 on the works and land plans.

(2) Before Merseytravel begins to use any part of the specified land for the construction of any of the authorised works therein it shall remove, or cause to be removed, from that part of the specified land the remains of all deceased persons interred therein in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land Merseytravel shall give notice of such intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing it once in each of two successive weeks in a newspaper circulating in the City of Liverpool; and
- (b) displaying it in a conspicuous place upon or near to the specified land.

(4) Forthwith after the first publication of a notice under paragraph (3) Merseytravel shall send a copy of the notice to the Library Records Office, Central Library, William Brown Street, Liverpool L3 8EW.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to Merseytravel of his intention to undertake the removal of such remains, and thereupon, if such remains can be identified, he shall be at liberty to cause such remains to be removed and reinterred in any burial ground or cemetery in which burials may legally take place, or to be removed to, and cremated in, any crematorium, and forthwith after such reinterment or cremation shall provide to Merseytravel a certificate for the purpose of enabling compliance with paragraph (10).

(6) If any person giving such notice as aforesaid fails to satisfy Merseytravel that he is such personal representative or relative as he claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by the county court, and the court shall have power to make an order specifying who shall remove the remains and as to the payment of the costs of the application.

(7) Merseytravel shall defray the reasonable expenses of the removal and reinterment or cremation of such remains.

(8) If—

- (a) within the said period of 56 days no notice under paragraph (5) has been given to Merseytravel in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days thereafter; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than Merseytravel, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified;

subject to paragraph (9) Merseytravel shall remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as Merseytravel thinks

suitable for the purpose and so far as possible remains from individual graves shall be reinterred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

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

(10) Upon the reinterment or cremation of any remains under this article—

- (a) a certificate of reinterment or cremation shall be sent to the Registrar General by Merseytravel giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
- (b) a copy of the certificate of reinterment or cremation and the record mentioned in paragraph (8) shall be sent to the Library Records Office mentioned in paragraph (4).

(11) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or power conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857⁽²³⁾ shall not apply to a removal carried out in accordance with this article.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

29.—(1) Merseytravel may acquire compulsorily so much of the land shown on the works and land plans as lying within the permanent limits as may be required for or in connection with the authorised works and may use any land so acquired for those purposes or for any other purposes connected with, or ancillary to, its tram system undertaking.

(2) Nothing in paragraph (1) shall authorise Merseytravel to acquire compulsorily any of the lands mentioned in Schedule 3 to this Order, or any rights over those lands, but Merseytravel may acquire by agreement any part of those lands, or any rights over them, and use them, for the purposes referred to in that paragraph.

(3) This article is subject to articles 34 and 35(2).

Application of Part I of the Compulsory Purchase Act 1965

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981⁽²⁴⁾ applies; and

⁽²³⁾ 1857 c. 81.

⁽²⁴⁾ 1981 c. 67.

(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 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.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

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

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

(5) In that section, subsections (5) and (6) shall be omitted and at the end there shall be substituted—

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

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

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

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

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

(8) References to the Compulsory Purchase Act 1965 shall be construed as references to that Act as applied to the acquisition of land under article 30.

Powers to acquire new rights

32.—(1) Merseytravel may compulsorily acquire such easements or other rights over any land within the permanent limits as may be required for any purpose for which that land may be acquired, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 to this Order), where Merseytravel acquires a right over land under paragraph (1) Merseytravel shall not be required to acquire a greater interest in that land.

(3) Schedule 7 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article or article 34 of a right over land by the creation of a new right.

Powers to acquire subsoil only

33.—(1) Merseytravel may compulsorily acquire so much of the subsoil of the land within the permanent limits as may be required for any purpose for which that land may be acquired instead of acquiring the whole of the land.

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

(3) Paragraph (2) shall not prevent article 39 from applying where Merseytravel acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

New rights only to be acquired in certain lands

34.—(1) In the case of the land specified in Schedule 8 to this Order Merseytravel's powers of compulsory acquisition under article 29 shall be limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of exercising the powers of article 19(1) and using and maintaining any apparatus affixed in the exercise of those powers.

(2) Where Merseytravel acquires easements or other new rights in the land specified in Schedule 8, article 32(2) shall apply as it applies to the acquisition of a new right under that article.

Rights under or over streets

35.—(1) Merseytravel may enter upon and appropriate so much of the surface, subsoil of, or air-space over, any street shown on the works and land plans and described in the book of reference as may be required for the purposes of the authorised works and may use the surface, subsoil and air-space for those purposes or any other purpose connected with or ancillary to its tram system undertaking.

(2) The power under paragraph (1) may be exercised in relation to a street without Merseytravel being required to acquire any part of the street or any easement or right in the street and, except in relation to a street which is subject to stopping up pursuant to article 11, the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the street.

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

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

(a) any subway or underground building; or

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

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

Temporary possession of land

Temporary use of land for construction of works

- 36.**—(1) Merseytravel may, in connection with the carrying out of the authorised works—
- (a) enter upon and take temporary possession of—
 - (i) so much of the land shown on the works and land plans as lying within the temporary limits for the purpose specified in relation to that land in column (3) of Schedule 9 to this Order relating to the scheduled works (or any of them) specified in column (4) of that Schedule; and
 - (ii) any of the land within the permanent limits in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
 - (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 14 days before exercising the powers of paragraph (1) Merseytravel shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) Merseytravel may not, without the agreement of the owners of the land, remain in possession of any land of which temporary possession has been taken under this article—
- (a) in the case of land lying within the temporary limits, after the end of the period of 2 years beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 9 to this Order; or
 - (b) in the case of land within the permanent limits, after the end of the period of 2 years beginning with the date of completion of the work or works for which temporary possession of the land was taken unless Merseytravel has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, Merseytravel shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Merseytravel shall not be required to replace a building removed under this article.
- (5) Merseytravel shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.
- (7) Without prejudice to article 76, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).
- (8) Where Merseytravel takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (9) Merseytravel shall not exercise the powers of this article in relation to any land within the permanent limits in the ownership or control of a local authority without the consent of the local authority, such consent not to be unreasonably withheld, and if within 28 days after any application for such consent has been submitted the local authority has not refused its consent and given the grounds for refusal, it shall be deemed to have given its consent.

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

(11) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 30(1).

Temporary use of land for maintenance of works

37.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, Merseytravel may—

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

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

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

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

(4) Merseytravel may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.

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

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

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

(8) Without prejudice to article 76, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) The powers of this article shall not be exercised in relation to any street without the consent of the street authority, which shall not be unreasonably withheld.

(11) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 30(1).

(12) In this article—

- (a) “building” includes any structure or other erection;
- (b) “the maintenance period”, in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for public use; and
- (c) any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

Compensation

Disregard of certain interests and improvements

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

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

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

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

Supplementary

Acquisition of part of certain properties

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

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

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on Merseytravel 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 Merseytravel 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 Merseytravel is authorised to acquire compulsorily under this Order.

(8) If Merseytravel 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) 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 Merseytravel 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, Merseytravel 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, Merseytravel 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

40.—(1) Subject to the provisions of this article, 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 Merseytravel, whether compulsorily or by agreement; or
- (b) on the entry on the land by Merseytravel under section 11(1) of the 1965 Act;

whichever is sooner.

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

(3) Subject to the provisions of this article, all private rights of way over land of which Merseytravel takes temporary possession under this Order shall be suspended and unenforceable for as long as Merseytravel 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 1961 Act.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 11 to this Order applies.

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

(a) any notice given by Merseytravel before the completion of the acquisition of the land, Merseytravel's appropriation of it, Merseytravel's entry onto it or Merseytravel's taking temporary possession of it, as the case may be, that any or all of those paragraphs shall not apply to any right of way specified in the notice; and

(b) any agreement made (whether before or after any of the events mentioned in subparagraph (a) and before or after the coming into force of this Order) between Merseytravel and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b) which is made with a person in or to whom the right of way is vested or belongs is expressed to have effect also for the benefit of those deriving title from or under him, it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Time limit for exercise of powers of acquisition

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

(a) no notice to treat shall be served under Part I of the 1965 Act, as applied to the acquisition of land under article 30; and

(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 31.

(2) The powers conferred by article 36 to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent Merseytravel from remaining in possession of land in accordance with article 36 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

OPERATION OF TRAM SYSTEM

Power to operate and use tram system

42.—(1) Merseytravel may operate and use the authorised tram system and the other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Subject to paragraph (4), article 52 and section 10 of the Transport Act 1968(26), Merseytravel shall, for the purpose of operating the tram system, have the exclusive right—

(a) to use the rails, foundations, cables, masts, overhead wires and other apparatus used for the operation of the tram system; and

(b) to occupy any part of the street in which that apparatus is situated.

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

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

Maintenance of approved works, etc.

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

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

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

Power to charge fares

44. Merseytravel may demand, take and recover or waive such charges for carrying passengers or goods on the authorised tram system, or for any other services or facilities provided in connection with the operation of the authorised tram system, as it thinks fit.

Removal of obstructions

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

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

(2) If any obstruction is caused to tramcars using the authorised tram system by a load falling on the tram system from a vehicle, the person in charge of the vehicle shall forthwith remove the load from the tram system; and if he fails to do so, Merseytravel may take all reasonable steps to remove the load and may recover the expenses reasonably incurred in doing so from—

- (a) any person who was in charge of the vehicle at the time when the load fell from it; or
- (b) any person who was the owner of the vehicle at that time unless he shows that he was not concerned in, or aware of, the vehicle being in the place at which the load fell from it.

(3) For the purposes of this article the owner of a vehicle shall be taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of the vehicle at any

(27) See S.I. 1994/157.

time, it shall be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicles Excise and Registration Act 1994(28).

Traffic signs

46.—(1) Merseytravel may, for the purposes of, or in connection with the operation of, the authorised tram system, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State on any street in which the authorised tram system is laid or which gives access to such a street.

(2) Merseytravel—

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

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

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

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

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

Traffic regulation

47.—(1) Subject to the provisions of this article Merseytravel may, for the purposes of the authorised tram system, at any time prior to the expiry of 12 months from the opening of the system for use and with the consent of the traffic authority in whose area the road concerned is situated—

- (a) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles in the manner specified in Part 1 of Schedule 10 to this Order on those roads specified in column (2) and along the lengths and between the points specified in column (3) of that Part of that Schedule;
- (b) authorise the use as a parking place in the manner specified in Part 2 of Schedule 10 to this Order of those roads specified in column (2) and along the lengths, between the points and to the extent specified in column (3) of that Part of that Schedule;
- (c) make provision as to the direction of vehicular traffic in the manner specified in Part 3 of Schedule 10 to this Order on the roads specified in column (2) and along the lengths, between the points and as respects direction to the extent specified in column (3) of that Part of that Schedule;
- (d) permit or prohibit vehicular access in the manner specified in Part 4 of Schedule 10 to this Order to those roads specified in column (2) and along the lengths, between the points and as respects direction to the extent specified in column (3) of that Part of that Schedule; and

- (e) revoke or amend in whole or in part any prohibition, restriction or other provision specified in Part 5 of Schedule 10 to this Order to the extent specified in that Part of that Schedule.
- (2) Without prejudice to the specific powers conferred by paragraph (1) but subject to the provisions of this article Merseytravel may, in so far as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance or operation of the authorised tram system, at any time prior to the expiry of 12 months from the opening of that system for use and with the consent of the traffic authority in whose area the road is situated or, in relation to parking places, with the consent of the local authority—
- (a) revoke or amend in whole or in part any order made, or having effect as if made, under the 1984 Act;
 - (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
 - (c) authorise the use as a parking place of any road;
 - (d) make provision as to the direction of vehicular traffic on any road; and
 - (e) permit or prohibit vehicular access to any road.
- (3) Merseytravel shall not exercise the powers of paragraphs (1) and (2) unless it has—
- (a) given not less than—
 - (i) 12 weeks' notice in writing of its intention so to do in the case of a permanent prohibition, restriction or other provision; or
 - (ii) 4 weeks' notice in writing of its intention so to do in the case of a temporary prohibition, restriction or other provision;
 to the chief officer of police and to the traffic authority in whose area the road is situated; and
 - (b) advertised its intention in such manner as the traffic authority may reasonably specify in writing within—
 - (i) 28 days of its receipt of notice of Merseytravel's intention in the case of paragraph (i) of sub-paragraph (a); or
 - (ii) 7 days in the case of paragraph (ii) of sub-paragraph (a).
- (4) Any prohibition, restriction or other provision made by Merseytravel under paragraph (1) or (2) shall have effect as if duly made by, as the case may be—
- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (b) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act;
- and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 10 to this Order) to which the prohibition, restriction or other provision is subject.
- (5) Any prohibition, restriction or other provision made under this article may be varied or revoked by Merseytravel from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised tram system for use.
- (6) Any prohibition, restriction or other provision made by Merseytravel under paragraph (1) or (2) may also be varied or revoked from time to time by, as the case may be—
- (a) the traffic authority in whose area the road is situated by an order under the 1984 Act; or
 - (b) the local authority in whose area the road is situated by an order under section 32 of the 1984 Act;

provided that no such order may be made so as to vary or revoke any provision previously made by Merseytravel under this article without the consent of Merseytravel, such consent not to be unreasonably withheld.

(7) Any consent required under this article shall not be unreasonably withheld but before giving any consent under paragraph (2) of this article the traffic authority or the local authority (as the case may be) shall consult such persons as it considers necessary and appropriate and shall take into consideration any representations made to it by any such person.

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

(9) The powers conferred on Merseytravel by this article with respect to the prohibition of vehicular access to any road shall have effect subject to any agreement entered into by Merseytravel with any person with an interest in premises served by the road.

Power to lop trees overhanging tram system

48.—(1) Merseytravel may fell or lop any tree or shrub near any part of the authorised tram system, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

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

(3) Nothing in this article shall be taken to affect the application of any tree preservation order made under section 198 of the 1990 Act.

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

Trespass on tramroads

49.—(1) Any person who—

- (a) trespasses on any authorised tramroad; or
- (b) trespasses upon any land of Merseytravel in dangerous proximity to any authorised tramroad or to any electrical or other apparatus used for or in connection with the operation of the authorised tramroads;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person shall be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass upon the tramroads was clearly exhibited and maintained at the tram stop on the authorised tram system nearest the place where the offence is alleged to have been committed.

Power to make byelaws

50.—(1) Merseytravel may make byelaws regulating the use and operation of, and travel on, the authorised tram system, the maintenance of order on the authorised tram system and on tram system premises or other facilities provided in connection with the authorised tram system and the

conduct of all persons, including employees of Merseytravel, while on the authorised tram system or on tram system premises.

(2) Without prejudice to the generality of paragraph (1), byelaws under this article may make provision—

- (a) with respect to tickets issued for travel on the authorised tram system, the payment of fares and charges and the evasion of payment of fares and charges;
- (b) with respect to interference with, or obstruction of, the operation of the authorised tram system or other facilities provided in connection with the authorised tram system;
- (c) with respect to access to and the carriage, use or consumption of anything on tram system premises;
- (d) with respect to the prevention of nuisances on tram system premises;
- (e) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within tram system premises;
- (f) for the safe custody and re-delivery or disposal of any property accidentally left on tram system premises and for fixing the charges made in respect of any such property;
- (g) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the authorised tram system or on tram system premises; and
- (h) subject to article 19(6)(a), for regulating (but not requiring) the maintenance of the façades of buildings to which any equipment has been attached pursuant to article 19 above.

(3) In paragraphs (1) and (2) references to “tram system premises” are references to premises of Merseytravel used for or in connection with the operation of the authorised tram system including any depot or building and any tramcar.

(4) Byelaws under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (4), if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public, or hindrance to Merseytravel in the operation of the tram system, Merseytravel may summarily take action to obviate or remove the danger, annoyance or hindrance.

(6) Before making any byelaws under this article Merseytravel shall consult the Council on the proposed byelaws.

(7) Byelaws under this article shall not come into operation until they have been confirmed by the Secretary of State.

(8) At least 28 days before applying for any byelaws to be confirmed under this article, Merseytravel shall publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the time during which a copy of the byelaws will be open to public inspection; and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(9) For at least 24 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws shall be kept at the principal office of Merseytravel and shall at all reasonable hours be open to public inspection without payment.

(10) Merseytravel shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as Merseytravel may determine.

(11) The Secretary of State may confirm with or without modification, or may refuse to confirm, any of the byelaws submitted under this article for confirmation and, as regards any byelaws so confirmed, may fix a date on which the byelaws shall come into operation; and if no date is so fixed the byelaws shall come into operation after the expiry of 28 days after the date on which they were confirmed.

(12) The Secretary of State may charge Merseytravel such fees in respect of any byelaws submitted for confirmation under this article as he may consider appropriate for the purpose of defraying any administrative expenses incurred by him in connection therewith.

(13) A copy of the byelaws when confirmed shall be printed and deposited at the principal office of Merseytravel and shall at all reasonable hours be open to public inspection without payment, and Merseytravel shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as Merseytravel shall determine.

(14) The production of a printed copy of byelaws confirmed under this article on which is endorsed a certificate purporting to be signed by a person duly authorised by Merseytravel stating—

- (a) that the byelaws were made by Merseytravel;
- (b) that the copy is a true copy of the byelaws;
- (c) that on a specified date the byelaws were confirmed by the Secretary of State; and
- (d) the date when the byelaws came into operation;

shall be *prima facie* evidence of the facts stated in the certificate.

(15) In this article—

- (a) “building” includes any structure and a bridge or aqueduct; and
- (b) “the Council” means Liverpool City Council in relation to its area and Knowsley Metropolitan Borough Council in relation to its area.

Power to contract for police services

51.—(1) Merseytravel may enter into any agreement with a police authority and its chief officer of police for the police force maintained by that authority to provide policing services for or in connection with the authorised tram system, including at any tram system premises.

(2) Any such agreement may provide for—

- (a) Merseytravel to make such payment or other consideration for those policing services as the parties may agree; and
- (b) such incidental and ancillary matters as the parties consider appropriate.

(3) In this article—

- (a) “chief officer of police” means a chief officer of police within the meaning of the Police Act 1996⁽²⁹⁾ or the Chief Constable of the British Transport Police Force;
- (b) “police authority” means a police authority within the meaning of that Act or the British Transport Police Authority; and
- (c) “tram system premises” means any premises of Merseytravel used for or in connection with the operation of the authorised tram system, including the operations and control centre, any other building and any tramcar.

(29) 1996 c. 16.

Powers of disposal, agreements for operation, etc.

52.—(1) Merseytravel may, with the consent of the Secretary of State, sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the authorised works and any land held in connection therewith or the right to operate the authorised works under this Order.

(2) Without prejudice to the generality of paragraph (1), Merseytravel may enter into and carry into effect agreements with respect to any of the following matters, namely, the construction, maintenance, use and operation of the authorised works, or any part or parts of them, by any other person, and other matters incidental or subsidiary thereto or consequential thereon, and the defraying of, or the making of contributions towards, the cost of the matters aforesaid by Merseytravel or any other person.

(3) Any agreement under subsection (2) may provide among other things for the exercise of the powers of Merseytravel in respect of the authorised works or any part or parts thereof, and for the transfer to any person of the authorised works or any part or parts thereof together with the rights and obligations of Merseytravel in relation thereto.

(4) The exercise of the powers of any enactment by any person in pursuance of any sale, lease, charge or disposal under paragraph (1), or any agreement under paragraph (2), shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by Merseytravel

Application of landlord and tenant law

53.—(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised tram system or the right to operate the same, and any agreement entered into by Merseytravel with any person for the construction, maintenance, use or operation of the authorised tram system, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Tramcars deemed public service vehicles

54.—(1) On such day as may be appointed under paragraph (2), regulations made, or having effect as if made, under sections 24, 25 or 60(1)(j) or (k) of the Public Passenger Vehicles Act 1981⁽³⁰⁾ shall have effect as if the tramcars used on the authorised tram system were public service vehicles used in the provision of a local service within the meaning of the Transport Act 1985.

(30) 1981 c. 14.

(2) Merseytravel may by resolution appoint a day for the purpose of any regulation mentioned in paragraph (1), the day so appointed being fixed in accordance with paragraph (3).

(3) Merseytravel shall publish in a newspaper circulating in its area, notice—

(a) of the passing of any such resolution and of the day fixed thereby; and

(b) of the general effect of the enactments for the purposes of which the day has been fixed; and the day so fixed shall not be earlier than the expiration of 28 days from the date of the publication of the notice.

(4) A photostatic or other reproduction certified by the secretary of Merseytravel to be a true reproduction of a page, or part of a page, of any newspaper bearing the date of its publication and containing the notice mentioned in sub-paragraph 3(b) shall be evidence of the publication of the notice and of the date of publication.

Substitute road services

55.—(1) Merseytravel may provide or secure the provision by other persons of services for the carriage of passengers by road (“substitute services”) where the tram system has been temporarily interrupted, curtailed or discontinued.

(2) The route, frequency and stopping places of any substitute service need not correspond with the route of the interrupted, curtailed or discontinued service.

(3) Section 6 of the Transport Act 1985(31) shall not apply to any substitute services.

PART 5

PENALTY FARES

Interpretation of Part 5

56.—(1) In this Part, unless the context otherwise requires—

“authorised person” means, in relation to any purpose, a person authorised for that purpose by Merseytravel;

“fare ticket” means a ticket authorising the person in respect of whom it is issued to travel on a tramcar;

“general travel authority” means any permit, other than a fare ticket, authorising the person in respect of whom it is issued to travel on a tramcar;

“penalty fare” means a penalty fare payable pursuant to article 58;

“the penalty fare provisions” means articles 58 to 63; and

“tram system stop” means a station or other regular stopping place on the authorised tram system at which passengers may get on or off tramcars.

(2) Any reference in this Part to a person producing a fare ticket or general travel authority on being required to do so by an authorised person is a reference to producing, when so required, a fare ticket or general travel authority which, either by itself or together with any other document produced by that person at the same time, is valid for the journey he has made.

(3) For the purposes of paragraph (2), a person who is on a tramcar shall be taken to have made a journey ending at the next scheduled tram system stop.

Operation of Part 5

57.—(1) The penalty fare provisions shall have effect in relation to travel on any tramcar on and after such day as the Secretary of State may specify.

(2) On the application of Merseytravel, or if he suspects on reasonable grounds that Merseytravel is not complying with the requirements of this Part, the Secretary of State may provide that the penalty fare provisions shall cease to have effect on and after such day as he may specify.

(3) Paragraph (2) is without prejudice to the power of the Secretary of State to specify further days on and after which the penalty fare provisions shall have effect.

(4) Any day specified by the Secretary of State for the purposes of paragraph (1) or (2) shall be published in a newspaper circulating in Merseytravel's area not later than one week before that date.

(5) No day may be specified under paragraph (1) except at the request of Merseytravel.

Penalty fares

58.—(1) If a person travelling on a tramcar, on being required to do so by an authorised person, fails to produce a fare ticket or a general travel authority, he shall be liable to pay a penalty fare if required to do so by an authorised person.

(2) A person shall not be liable to pay a penalty fare if at the tram system stop where, and the time when, he boarded the tramcar and if on the tramcar there were no facilities for the sale of the necessary fare ticket for his journey.

(3) Paragraphs (4) and (5) have effect with respect to the burden of proof in any action for the recovery of a penalty fare under this article so far as concerns the question whether the facts of the case fall within paragraph (2).

(4) In any case where the defendant has provided the plaintiff with a relevant statement in due time it shall be for the plaintiff to show that the facts of the case do not fall within paragraph (2), and in any other case it shall be for the defendant to show that the facts of the case fall within that provision.

(5) For the purposes of paragraph (4)—

- (a) a relevant statement is a statement giving an explanation of the defendant's failure to produce a fare ticket or general travel authority, together with any information as to his journey relevant to that explanation (including, in every case, an indication of the tram system stop where he boarded the tramcar); and
- (b) a statement is provided in due time if it is provided when the defendant is required to produce a fare ticket or general travel authority, or at any later time before the expiration of the period of 21 days beginning with the day following the day on which the journey is completed.

Amount of penalty fare

59.—(1) Subject to paragraph (2), a penalty fare shall be £10 and shall be payable to Merseytravel before the expiration of the period of 21 days beginning with the day following the day on which the journey in respect of which it is payable is completed.

(2) Merseytravel may from time to time vary the amount of the penalty fare provided that—

- (a) the consent of the Secretary of State is obtained in writing to such a variation; and
- (b) a notice stating the amount of the penalty fare as so varied is published in a newspaper circulating in Merseytravel's area not later than 28 days before the day on which the penalty fare, as so varied, is to take effect.

Document to be issued in connection with penalty fare requirement

60.—(1) An authorised person who requires a person (referred to below as “the passenger”) to pay a penalty fare shall give him either a receipt for the payment of the amount of the penalty (where the passenger makes that payment to the authorised person) or a notice stating that the requirement has been made.

(2) A receipt or notice given under paragraph (1) shall specify the passenger’s destination on the tramcar on which he is travelling when required to pay the penalty fare, and shall operate as an authority to him to complete his journey to that destination.

(3) For the purposes of paragraph (2), the passenger’s destination shall (unless only one destination is possible in the circumstances) be taken to be the destination stated by the passenger or, in default of any statement by him identifying his destination, such destination as may be specified by the authorised person.

Notice of penalty fare provisions

61.—(1) It shall be the duty of Merseytravel to secure that a warning notice meeting the requirements of paragraph (2) shall be posted—

- (a) at every tram system stop, in such a position as to be readily visible to prospective passengers; and
- (b) in every tramcar, in such a position as to be readily visible to passengers travelling on that tramcar.

(2) A warning notice posted pursuant to paragraph (1) shall (however expressed) indicate the circumstances (as provided in article 58) in which persons travelling on a tramcar may be liable to pay a penalty fare and state the amount of the penalty fare.

Supplementary provisions

62.—(1) A person who is required to pay a penalty fare shall, unless he pays, immediately and in cash, the amount of the penalty fare to an authorised person requiring such payment, give to that authorised person, if that person requires him to do so, his name and address; and any person failing to do so shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) Where an authorised person requires any person to do anything pursuant to any provision of this Order he shall, if so requested by the person concerned, produce to that person a duly authenticated document showing his authority; and a requirement by an authorised person shall be of no effect if, as respects that requirement, he fails to comply with this paragraph.

Exclusion of double liability

63.—(1) Where a person has become liable to pay a penalty fare in respect of any journey (referred to below as “the relevant journey”), no proceedings may be brought against him for either of the offences specified in paragraph (2) before the end of the period mentioned in article 59(1); and no such proceedings may be brought after the end of that period if—

- (a) he has paid the penalty fare to Merseytravel before the end of that period; or
- (b) an action has been brought against him for the recovery of that fare.

(2) The offences mentioned in paragraph (1) are—

- (a) any offence under byelaws made under article 50 involving a failure to obtain or produce a fare ticket or general travel authority for the relevant journey; and

(b) any offence under section 25(3) of the Public Passenger Vehicles Act 1981⁽³²⁾ of contravening or failing to comply with any provision of regulations for the time being having effect by virtue of that section by failing to pay the fare properly payable for the relevant journey or any part of it.

(3) If proceedings are brought against any such person for any such offence he shall cease to be liable to pay the penalty fare and, if he has paid it, Merseytravel shall be liable to repay to him an amount equal to the amount of that fare.

PART 6

PROTECTIVE PROVISION

Statutory undertakers, etc.

64. The provisions of Schedule 11 to this Order shall have effect.

Minerals

65. 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

66. 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

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

(2) In this article—

“highway” means a street vested in or maintainable by the highway authority;

“highway operations” means the construction or non-routine maintenance of any part of the authorised works which will involve interference with a highway or the traffic in a highway, any temporary stopping up, alteration or diversion of a highway, any occupation of the surface of a highway or any placing of equipment or apparatus in a highway; and

“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 (6), Merseytravel shall consult the highway authority concerned as to any works to and changes in the management of the highway network

(32) 1981 c. 14.

which may be required to ensure the effective integration of the authorised tram system with other forms of highway traffic and, within 28 days of being requested in writing by Merseytravel to do so, the highway authority shall provide Merseytravel with its opinion on the subject.

(5) Prior to seeking approval under paragraph (6) Merseytravel shall consult the highway authority concerned as to the design of any lighting for tram stops, the design and positioning of any poles and brackets required for overhead line equipment and the design of any traffic signalling system for the authorised tram system.

(6) 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, Merseytravel 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.

(7) If, within 56 days after any plans have been submitted to a highway authority under paragraph (6), it has not intimated its disapproval and the grounds of disapproval, it shall be deemed to have approved them.

(8) In the event of any disapproval of plans by a highway authority under this paragraph, Merseytravel 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.

(9) In submitting plans under paragraph (6), Merseytravel shall—

- (a) ensure that the design of any lighting for tramcar stops 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 tram system is fully compatible with traffic signalling for other traffic users whilst achieving appropriate priority signalling for tramcars using the authorised tram system wherever practicable.

(10) 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 Merseytravel regarding the highway operations without the prior consent in writing of Merseytravel but 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 paragraph.

(11) To facilitate liaison with Merseytravel, the highway authority concerned shall provide so far as is reasonably practicable a representative to attend meetings arranged by Merseytravel respecting highway operations.

(12) 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 highway authority or, in case of difference between Merseytravel 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.

(13) Merseytravel 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.

(14) Merseytravel 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.

(15) Merseytravel shall, if reasonably so required by the highway authority, provide and maintain during such time as Merseytravel 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 standard recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs Regulations and General Directions 2002⁽³³⁾ in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

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

(17) Merseytravel 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 Merseytravel, its contractors, servants or agents.

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

For protection of the Environment Agency

68.—(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 Merseytravel and the Agency, have effect.

(2) 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 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 tram system, Merseytravel 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.

(3) The approval of plans furnished under this article 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.

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

(5) 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 tram system and constructed under the powers of this Order shall be maintained by Merseytravel in good repair and condition and free from obstruction.

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

(33) S.I. 2002/3113.

(7) If any obstruction is erected or raised or any culvert is constructed, altered or replaced in contravention of this article Merseytravel 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 Merseytravel as a debt due from it to the Agency.

For protection of specified undertakers

69. The provisions of Schedule 12 to this Order shall have effect.

For protection of British Waterways Board

70. The provisions of Schedule 13 to this Order shall have effect.

PART 7

MISCELLANEOUS AND GENERAL

Street and market traders

71.—(1) Where Merseytravel considers that the carrying on within any part of a street within the Order limits by the holder of a public markets licence, a street trader's licence or a street trading consent, of the trading permitted by that licence or consent, would prevent or seriously impede the construction or maintenance of the authorised works or the safe operation of the authorised street tramway, Merseytravel may—

- (a) revoke that licence or consent, as the case may be, if it only permits trading in a street in which the tram system is or is to be laid or in any street having a junction with such a street; or
- (b) with the consent of the Council, vary the principal or the subsidiary terms of that licence or the conditions of that consent, as the case may be.

(2) The principal or subsidiary terms of a street trader's licence or the conditions of a street trading consent may be varied by Merseytravel under paragraph (1) so that the licence or consent, as the case may be, permits trading in a street which is beyond a street in which the tram system is or is to be laid or any street having a junction with such a street.

(3) Merseytravel shall serve written notice of any such revocation or variation on the licence-holder or the holder of the consent in question not less than 28 days before the revocation or variation is to take effect.

(4) Where Merseytravel revokes a street trader's licence under this article, the Council may remit or refund, as it considers appropriate, the whole or a part of—

- (a) any fee paid for the grant or renewal of the licence; or
- (b) any charges recoverable by them under paragraph 9(6) of Schedule 4 to the 1982 Act.

(5) Where Merseytravel revokes a public markets licence or a street trading consent under this article, the Council may remit or refund, as it considers appropriate, the whole or a part of any fee paid for the grant or renewal of the licence or consent.

(6) No legal proceedings whatever may be taken against the Council in relation to any consent given under paragraph (1)(b) except where the Council or any employee, contractor or agent of the Council has acted negligently in giving that consent.

(7) Merseytravel shall pay compensation to any person who suffers any loss or damage from the exercise of the powers conferred by paragraph (1) and in assessing the amount of any

such compensation there shall be taken into account any money paid to that person pursuant to paragraph (4) or (5).

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

(9) In this article—

“the 1982 Act” means the Local Government (Miscellaneous Provisions) Act 1982⁽³⁴⁾;

“the Council” means Liverpool City Council in relation to its area and Knowsley Metropolitan Borough Council in relation to its area, and in each case includes the Council's employees, agents and contractors;

“public markets licence” means a licence to trade at any street market granted to any person by the Council pursuant to its rights under any Royal Charter or enactment;

“street trading consent” means a consent to trade in a street granted to any person by the Council pursuant to Schedule 4 to the 1982 Act; and

“street trader's licence” means a licence to trade in a street granted to any person by the Council pursuant to Schedule 4 to the 1982 Act or any other enactment.

Disclosure of confidential information

72. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 22 or article 25; and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret;

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

Defence to proceedings in respect of statutory nuisance

73.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽³⁵⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by Merseytravel for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974⁽³⁶⁾; or
- (b) that the nuisance is a consequence of the operation of the works authorised by this Order and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974, namely—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and

⁽³⁴⁾ 1982 c. 30.

⁽³⁵⁾ 1990 c. 43.

⁽³⁶⁾ 1974 c. 40.

- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded);

shall not apply where the consent relates to the use of premises by Merseytravel for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article are without prejudice to any rule of common law having similar effect.

Certification of plans, etc.

74. Merseytravel shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the works and land plans and the traffic regulation order plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, the works and land plans and the traffic regulation 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

75.—(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⁽³⁷⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

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

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

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

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

No double recovery

76. 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, or under two or more different provisions of this Order.

(37) 1978 c. 30.

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

Arbitration

77. 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 of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

Ellis Harvey
Head of the Transport and Works Act Orders
Unit
Department for Transport

21st January 2005