
STATUTORY INSTRUMENTS

2016 No. 1035

The Transport for Greater Manchester (Light Rapid Transit System) (Trafford Park Extension) Order 2016

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Transport for Greater Manchester (Light Rapid Transit System) (Trafford Park Extension) Order 2016 and comes into force on 24th November 2016.

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 1980 Act” means the Highways Act 1980⁽³⁾;

“the 1984 Act” means the Road Traffic Regulation Act 1984⁽⁴⁾;

“the 1990 Act” means the Town and Country Planning Act 1990⁽⁵⁾;

“the 1991 Act” means the New Roads and Street Works Act 1991⁽⁶⁾;

“address” includes any number or address used for the purposes of electronic transmission;

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

“the authorised transit system” means the transit system authorised by this Order;

“the authorised works” means the scheduled works and any other works authorised by this Order, or any part of them;

“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;

“the Borough Council” means Trafford Metropolitan Borough Council;

“building” includes any structure or erection, or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

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

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act⁽⁷⁾;

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

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“footway” has the same meaning as in the 1980 Act;

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

“the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the works and land plans;

“the limits of deviation” means the limits of lateral deviation for the scheduled works mentioned in article 8(1)(a) and (2) (power to deviate);

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

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

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981⁽⁹⁾;

“parking place” has the same meaning as in section 32 (power of local authorities to provide parking places) of the 1984 Act;

“the permanent limits” means the limits of deviation and of land to be acquired or used, as shown on the works and land plans, and described in the book of reference;

“the scheduled works” means the works specified in Schedule 1 (scheduled works), 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 3 of the 1991 Act;

“street tramway” means any part of a transit system which is laid along a street whether or not the section of the street in which its rails are laid may be used by other traffic;

“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 6 (land of which temporary possession may be taken);

“the traffic regulation plans” means the plans certified by the Secretary of State as the traffic regulation 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 transit system;

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

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

(a) provide support and guidance for vehicles carried on flanged wheels; and

(7) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

(8) 1989 c. 29.

(9) 1981 c. 67.

(b) are laid in part along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“the undertaker” means Transport for Greater Manchester established by the South East Lancashire and North East Cheshire Passenger Transport Area (Designation) Order 1969⁽¹⁰⁾;

“watercourse” includes all docks, rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer or drain; 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.

(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) In the case of any street in relation to which a pedestrian planning order made under section 249(2) (order extinguishing right to use vehicles on highway) of the 1990 Act is in force, the kerbline of the street, where there is no kerb, is to be taken to be the edge of the part of the street on which the passage of vehicles is permitted.

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

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

(6) All distances, directions, lengths and points stated in the description of the scheduled works or in any description of powers or lands are approximate and distances between points on a scheduled work are taken to be measured along the scheduled work.

Application of enactments relating to railways

3.—(1) The provisions of the Railway Regulation Acts 1840 to 1893⁽¹¹⁾ do not apply in relation to the authorised transit system.

(2) The provisions of the Highways (Railway Crossings) Act 1839⁽¹²⁾ do not apply in relation to the authorised transit system.

Application of 1991 Act

4.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act 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) (which defines what highway authority works are major highway works) of that Act; 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 (dual carriageways and roundabouts) of the 1980 Act or section 184 (vehicle crossings) of that Act.

⁽¹⁰⁾ S.I. 1969/25, amended by S.I. 1973/1727. By virtue of S.I. 2011/908 the passenger transport executive was re-named “Transport for Greater Manchester”.

⁽¹¹⁾ 1840 c. 897, 1842 c. 55, 1868 c. 119, 1873 c. 48 and 1887 c. 57.

⁽¹²⁾ 1839 c. 45.

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major transport works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by 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);
- section 58A (restriction on works following substantial street works);
- 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 apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 14 (temporary stopping up of streets) 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(**13**) referred to in paragraph (4) are—

- section 54(**14**) (advance notice of certain works), subject to paragraph (6);
- section 55(**15**) (notice of starting date of works), subject to paragraph (6);
- section 57(**16**) (notice of emergency works);
- section 59(**17**) (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) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 16 (maintenance of altered or diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and the undertaker is not by reason of any duty under that article to maintain a street to

(13) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(14) As also amended by section 49(1) of the Traffic Management Act 2004.

(15) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(16) As also amended by section 52(3) of the Traffic Management Act 2004.

(17) As amended by section 42 of the Traffic Management Act 2004.

be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or

- (b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

(8) To such extent as is reasonably necessary for protecting the authorised transit system and its operation and use the undertaker has the same powers with regards to reinstatement as a street authority has under section 72 (powers of street authority in relation to reinstatement) of the 1991 Act.

(9) In its application to the authorised transit system, section 93(3) (works affecting level crossings or tramways) of the 1991 Act also permits the undertaker to make reasonable requirements—

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

Disapplication of the Commons Act 2006

5. No land within the limits of land to be acquired or used may be registered in accordance with paragraphs 2 to 4 of Schedule 2 (non-registration or mistaken registration under the 1965 Act) to the Commons Act 2006(18).

As to Trafford Park railways

6.—(1) In constructing the authorised works, the undertaker may remove any track or other apparatus within the limits of deviation.

(2) Nothing in the Trafford Park Railway enactments is to be taken to permit any railway to be carried across or to permit any other interference with the construction or operation of the transit system authorised by this Order without the consent of the undertaker, but such consent must not be unreasonably withheld.

(3) In this article, the Trafford Park Railway enactments means the West Manchester Light Railway Orders 1899 to 1906 made under the Light Railways Act 1896(19), the Trafford Park Act 1904(20), the Trafford Park Act 1922(21), the Trafford Park Railway Order 1995(22) and the Trafford Park Railway Order 2000(23).

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

7.—(1) The undertaker may construct and maintain the scheduled works.

(18) 2006 c. 26.
(19) 1896 c. 48.
(20) 1904 c. ccxxv.
(21) 1922 c. xxvii.
(22) S.I. 1995/2446.
(23) S.I. 2000/849.

(2) Subject to article 8 (power to deviate), 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), the undertaker may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) stations, platforms and tram stops;
- (b) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised transit system;
- (c) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (d) works for the strengthening, alteration or demolition of any building;
- (e) works to, including the maintenance 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, 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), the undertaker may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(5) The undertaker may remove any works constructed by it under this Order which have been constructed as temporary works or which it no longer requires.

(6) Where the undertaker 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) only authorise the carrying out or maintenance of works—

- (a) within the Order limits; or
- (b) within the boundaries of any street.

(8) The powers of this article must not be exercised within the boundaries of a street outside of the Order limits without the consent of the street authority but such consent may not be unreasonably withheld.

(9) Regulation 12(1)(a) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010⁽²⁴⁾ does not apply to the carrying out of a relevant flood risk activity for the purpose of, or in connection with, the construction of the authorised works.

(10) Section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991⁽²⁵⁾ and any byelaws made under that Act or the Water Resources Act 1991⁽²⁶⁾ do not apply to anything done under or in pursuance of this Order.

⁽²⁴⁾ S.I. 2010/675 as amended by the Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2016 (S.I. 2016/475).

⁽²⁵⁾ 1991 c. 59.

⁽²⁶⁾ 1991 c. 57.

(11) Regardless of the powers conferred by paragraph (3)(e) the undertaker and a person responsible for any street furniture or apparatus may enter into agreements for that person to undertake under the powers conferred by this article or under its own powers any works to the apparatus which may be required by the undertaker for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(12) Except to the extent that they conform to the scheduled works, the undertaker must not construct any part of Works Nos. 1, 2, 3 and 3A authorised by section 4 (power to make works) of the Greater Manchester (Light Rapid Transit System) Act 1992⁽²⁷⁾ or the work authorised by the Greater Manchester (Light Rapid Transit System) (Trafford Park) Order 2001⁽²⁸⁾ (as detailed in Schedule 1 (scheduled works) to that Order).

Power to deviate

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

- (a) deviate laterally from the lines or situations shown on the works and land plans within the permanent 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, the undertaker may deviate laterally within the boundaries of that street.

(3) The undertaker may, in constructing or maintaining the scheduled works, lay down—

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

(4) The powers conferred by paragraph (3) must not be exercised in the case of any authorised street tramway without the consent of the street authority, but such consent must not be unreasonably withheld.

Designation of works

9.—(1) Regardless of anything in the description of the scheduled works, the whole or any part of the scheduled works may be constructed within the limits of deviation for that work either along a street as a street tramway or off-street as a tramroad and so far as it is constructed as a street tramway or tramroad it is to be treated for the purposes of this Order as if it were so designated.

(2) Where, by means of the creation or extinction of rights of way—

- (a) any part of the authorised transit system which has been constructed as a tramroad becomes a street tramway, it is to be treated for the purposes of this Order as if it were designated as a street tramway; and
- (b) any part of the authorised transit system which has been constructed as a street tramway becomes a tramroad, it is to be treated for the purposes of this Order as if it were designated as a tramroad.

⁽²⁷⁾ 1992 c. xviii.

⁽²⁸⁾ S.I. 2001/1367.

Streets

Power to alter layout, etc., of streets

10.—(1) The undertaker may alter the layout of, and carry out other ancillary works in, any street specified in column (1) of Schedule 2 (streets subject to alteration of layout) in the manner specified in relation to that street in column (2) of that Schedule.

(2) Without limitation on the scope of the specific powers conferred by article 7 (power to construct and maintain works) or paragraph (1), but subject to paragraph (3), the undertaker may, for the purpose of constructing, maintaining or using the authorised transit system, alter the layout of any street along which the authorised transit system is or is to be laid and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, the undertaker may—

- (a) increase or reduce the width of the whole or part of any carriageway, kerb, footway, cycle track or verge within the street;
- (b) alter the level of the whole or part of any such carriageway, kerb, footway, cycle track or verge;
- (c) replace or alter the surface or surface treatment of the street;
- (d) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for tramcars or by carrying out other works for that purpose;
- (e) carry out works for the provision or alteration of parking places, loading bays, bus stop clearways, cycle tracks and bus laybys;
- (f) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999⁽²⁹⁾ and which are carried out in compliance with those regulations;
- (g) carry out works to the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the authorised transit system; and
- (h) make and maintain crossovers, sidings or passing places.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

Power to keep apparatus in streets

11.—(1) The undertaker may, for the purposes of or in connection with the construction, maintenance and use of the authorised transit system, place and maintain in any street in which the transit system is or is to be laid or in any other street any work, equipment or apparatus including, without limitation on the scope of that power, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

(2) The powers conferred by this article must not be exercised within the boundaries of a street outside of the Order limits without the consent of the street authority, but such consent must not be unreasonably withheld.

(3) In this article—

- (a) “apparatus” has the same meaning as in Part 3 (street works in England and Wales) 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.

⁽²⁹⁾ S.I. 1999/1026.

Power to execute street works

12.—(1) The undertaker may, for the purpose of exercising the powers conferred by article 11 (power to keep apparatus in streets) or any other provision of this Order, enter upon any street and may execute any works required for or incidental to the exercise of those powers including, without limitation on the scope of that power, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

(2) The powers conferred by this article must not be exercised within the boundaries of a street outside of the Order limits without the consent of the street authority, but such consent must not be unreasonably withheld.

Stopping up of streets

13.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the streets specified in column (1) of Parts 1, 2 and 3 of Schedule 3 (streets to be stopped-up) to the extent specified, by reference to the letters and numbers shown on the works and land plans, in column (2) of those Parts of that Schedule.

(2) No street specified in column (1) of Parts 1 and 2 (being a street, footpath or bridleway to be stopped up for which a substitute is to be provided) of Schedule 3 is to be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (3) of those Parts 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 for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in column (1) of Part 3 (being a street to be stopped up for which no substitute is to be provided) of Schedule 3 is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

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

- (a) the undertaker is in possession of the land;
- (b) there is no right of access to the land from the street concerned;
- (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 the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of its tramway undertaking so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of the execution of the authorised works, may 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 limitation on the scope of paragraph (1), the undertaker may use any street stopped up under the powers conferred by this article as a temporary working site.

(3) The undertaker must 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 limitation on the scope of paragraph (1), the undertaker may exercise the powers conferred by this article in relation to the streets specified in column (1) of Schedule 4 (streets to be temporarily stopped up) to the extent specified in column (2) of that Schedule.

(5) The undertaker must not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (4), without first consulting the street authority; and
- (b) in relation to any other street, without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

15. The undertaker may, for the purposes of the construction, operation or maintenance of the authorised works, form and lay out such means of access, or improve such existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised works, as may be approved by the highway authority, but such approval must not be unreasonably withheld.

Maintenance of altered or diverted streets

16.—(1) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority (confirmation of which must not be unreasonably withheld), unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and after the expiry of that period by and at the expense of the street authority.

(2) Paragraph (1) does not apply in relation to the structure of any bridge or tunnel carrying a street over a transit system or carrying a transit system over a street and except as provided in that paragraph the undertaker is not liable to maintain the surface of any street in, on, under or over which the scheduled works is constructed, or the immediate approaches to any such street, unless otherwise agreed with the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that the undertaker 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.

(4) For the purposes of a defence under paragraph (3), the court must in particular have regard to the following matters—

- (a) the character of the street including its use for a transit system, 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 the undertaker 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 the undertaker 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 the undertaker 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 the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

Restoration of streets if street tramway discontinued

17. If the undertaker abandons the construction of, or permanently ceases to operate any of, the authorised street tramways (“the discontinued tramway”), it must 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, or redundant works, equipment and apparatus were laid, regard being had to—
 - (i) the condition of the street before the tramway was laid; and
 - (ii) the nature of the traffic using the street at the time of the discontinuance.

Agreements with street authorities

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

- (a) the construction of any new street (including any structure carrying the street over or under the authorised transit system) 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 transit system is laid, or of the structure of any bridge or tunnel carrying a street over or under the authorised transit system;
 - (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 12 (power to execute street works).
- (2)** Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question; and

- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Level crossings

19.—(1) The undertaker may construct and maintain the authorised transit system so as to enable tramcars upon it to cross on the level any highway or other road for the time being crossing the route of the system.

(2) The undertaker may provide, maintain and operate at or near any level crossing such protective equipment as it may determine.

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

(4) Without limitation on the scope of article 10 (power to alter layout, etc., of streets), the undertaker may in the exercise of the powers conferred by this article alter the level of any highway or road referred to in paragraph (1).

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

(6) In this article—

“level crossing” means the place at which the authorised transit system 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

20.—(1) Subject to the following provisions of this article, the undertaker may affix to any building on land listed in the book of reference—

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

(2) The power conferred by paragraph (1) to affix to any building such apparatus as is mentioned in that paragraph includes the power to extend the apparatus over any land or other building between the frontage of the building to which the apparatus is affixed and the street.

(3) The undertaker must not, under the powers conferred by this article, affix any apparatus to any part of a building without the consent of the relevant owner of that part of the building; and such consent may be given subject to reasonable conditions but must not be unreasonably withheld.

(4) Paragraph (3) has effect without affecting any other right which the undertaker may have or obtain to affix apparatus to a building.

(5) Where —

- (a) the undertaker serves on the relevant owner of part of a building a notice requesting the relevant owner’s consent to the affixing of specified apparatus to that part of the building under paragraph (3); and

- (b) the relevant owner does not within the period of 56 days beginning with the date upon which the notice is served give consent unconditionally or give it subject to conditions or refuse it,

the consent is to be deemed to have been withheld.

(6) Where, in the opinion of the undertaker, a consent required under paragraph (3) 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 determine that the consent was not unreasonably withheld.

(7) Where apparatus is affixed to or extended over any part of a building under this article—

- (a) any relevant owner for the time being of that part of the building may serve on the undertaker not less than 6 months' notice requiring the undertaker at its own expense temporarily to remove the apparatus during any demolition, reconstruction or repair of the building if such removal is reasonably necessary for that purpose; and
- (b) the undertaker has the right as against any person having an interest in the building to retain and maintain the apparatus.

(8) Where, in the opinion of the undertaker, a requirement temporarily to remove any apparatus affixed to or extended over a building under this article during any demolition, reconstruction or repair of the building is not reasonably necessary for that purpose, the undertaker may refer the matter to an arbitrator under article 53 (arbitration) who may either allow the apparatus to be temporarily removed or may order that it is not to be temporarily removed.

(9) The undertaker must 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 compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(10) In this article, "relevant owner"—

- (a) in relation to a part of a building occupied under a lease or tenancy having an unexpired term exceeding 15 years, means the occupier of that part of the building;
- (b) in relation to any part of an external wall of a building which is the subject of a lease or tenancy having an unexpired term exceeding 15 years not being a part to which sub-paragraph (a) applies, means the person who for the time being is the lessee or tenant under the lease or tenancy of that part or (if there is more than one such lease or tenancy) the lease or tenancy in possession; or
- (c) in relation to any part of a building or land not falling within sub-paragraph (a) or (b) means the person for the time being entitled to receive the rack rent of that part of the building whether on that person's own account or as trustee for any other person, or who would so receive it if that part of the building were let at a rack rent.

Discharge of water

21.—(1) The undertaker 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 the authorised transit system is authorised to be laid, make openings into, and connections with, the watercourse, sewer or drain.

(2) Any dispute arising from the exercise of the power conferred by paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991⁽³⁰⁾.

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must 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.

(6) The undertaker must 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, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010⁽³¹⁾.

(8) 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⁽³²⁾; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991⁽³³⁾ have the same meaning as in that Act.

Works to safeguard buildings and the operation of the authorised transit system

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

(2) Safeguarding works may be carried out—

- (a) at any time before or during the construction, in the vicinity of the building, of any part of the authorised works (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 the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

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

⁽³⁰⁾ 1991 c. 56. Section 106 was amended by section 35(1) and (8) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

⁽³¹⁾ S.I. 2010/675

⁽³²⁾ 1964 c. 40.

⁽³³⁾ 1991 c. 57.

- (a) enter the building and any land within its curtilage; and
 - (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, 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 within its curtilage;
 - (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
 - (d) a right under paragraph (4)(b) to enter land,

the undertaker must, 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 of 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 53 (arbitration).

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

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

the undertaker must compensate the owners and occupiers of the building for any damage sustained by them.

(9) Without affecting article 52 (no double recovery), nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

- (11) In this article “safeguarding works”, in relation to a building, means—
- (a) 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;
 - (b) 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
 - (c) any works the purpose of which is to secure the safe operation of the authorised transit system or to prevent or minimise the risk of such operation being disrupted.

Planning permission

23. Planning permission which is deemed by a direction under section 90(2A)(34) (development with government authorisation) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of that Act.

Power to survey and investigate land, etc.

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

- (a) survey or investigate any land within the Order limits, any street along which the authorised transit system is authorised to be laid and any street having a junction with such a street;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope 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 the undertaker—

- (a) must, if so required, before or after entering the land produce written evidence of that person's authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must 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 1 of the 1961 Act.

(6) Nothing in this article overrides the requirement to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(35).

Mode of construction and operation of transit system

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

(34) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

(35) 1979 c. 46.

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

(3) Where the authorised transit system 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), the undertaker must take such care as in all the circumstances is reasonable to ensure that the authorised transit system is constructed and maintained so that the street or other place is safe for other users.

(4) When considering what measures are required under paragraph (3) the undertaker must 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.

(5) Where the authorised transit system has been constructed in a street, works by any person which affect or are likely to affect the undertaker's obligations under paragraph (3), including works to any street surfaces and works affecting any equipment or apparatus placed in the street under article 11 (power to keep apparatus in streets), must not be carried out without the consent of the undertaker, which may be given subject to such reasonable terms and conditions as the undertaker may require but must not be unreasonably withheld.

Obstruction of construction of authorised works

26. Any person who, without reasonable excuse—

- (a) obstructs another person acting under the authority of the undertaker in setting out the lines of the scheduled works, or in constructing any of the authorised works; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

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

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

27. The undertaker 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 that are ancillary to its transit system undertaking.

Application of Part 1 of the 1965 Act

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(36) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect as if sections 4 (time limit for giving notice to treat) and 4A(37) (extension of time limit during challenge) were omitted.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

29.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(38) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must 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)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

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

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) that person 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” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

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

(8) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land by article 28 (application of Part 1 of the 1965 Act).

Power to acquire new rights

30.—(1) The undertaker 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 (other provisions as to divided land) of the 1965 Act (as substituted by paragraph 5 of Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the undertaker acquires a right under paragraph (1) the undertaker is not required to acquire a greater interest in that land.

(37) Inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(38) 1981 c. 66.

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

Power to acquire subsoil only

31.—(1) The undertaker may compulsorily acquire so much of, or such rights in, 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 the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1) the undertaker cannot be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 37 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

32.—(1) The undertaker 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 ancillary to its transit system undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5) 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 the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation, the amount of such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) does 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 is not payable under paragraph (3) to any person who is an undertaker, to whom section 85 (sharing of cost of necessary measures) 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

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

(a) enter upon and take temporary possession of—

- (i) any of the land within the temporary limits for the purpose specified in relation to that land in column (3) of Schedule 6 (land of which temporary possession may be taken) relating to the scheduled works 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(39) (powers of entry) of the 1965 Act or no declaration has been made under section 4 (execution of declaration) 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 conferred by paragraph (1) the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land 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 specified in relation to that land in column (4) of Schedule 6; 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 for which temporary possession of the land was taken unless the undertaker 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, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.
- (5) The undertaker must 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, is to be determined under Part 1 of the 1961 Act.
- (7) Without affecting article 52 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(40) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).
- (8) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (9) Section 13(41) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 28(1) (application of Part 1 of the 1965 Act).

(39) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(40) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(41) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

Temporary use of land for maintenance of works

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

- (a) enter upon and take temporary possession of any land within the Order limits reasonably required for the purpose of 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) does not authorise the undertaker 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 the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker 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, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must 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, is to be determined under Part 1 of the 1961 Act.

(8) Without affecting article 52 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 28(1) (application of Part 1 of the 1965 Act).

(12) In this article, "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.

Compensation

Disregard of certain interests and improvements

35.—(1) In assessing the compensation (if any) payable to any person on the acquisition from that person of any land or interest in land under this Order, the tribunal must 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 that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Set-off for enhancement in value of retained land

36.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity, which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 30 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are acquired; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised works.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Acquisition of part of certain properties

37.—(1) This article applies instead of section 8(1)(42) (other provisions as to divided land) of the 1965 Act (as applied to this Order by article 28 (application of Part 1 of the 1965 Act)) 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 part only of a house, building or manufactory or part only of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

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

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

(5) If on such a reference the tribunal determines 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) where the land subject to the notice to treat forms 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 is required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines 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) where the land subject to the notice to treat forms 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 is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines 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 is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines 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 is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, must pay to the owner compensation for any loss or expense occasioned to the owner 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 part only of a house, building or manufactory or part only of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

38.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is sooner.

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

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

- (a) any notice given by the undertaker before the completion of the acquisition of the land, the undertaker's appropriation of it, the undertaker's entry onto it or the undertaker's taking temporary possession of it, as the case may be, that any or all of those paragraphs do 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 the undertaker and the person in or to whom the right of way in question is vested or belongs.

(6) If any such agreement as is referred to in paragraph (5)(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 that person, it is 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

39.—(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 is to be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 28 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied to this Order by article 29 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The power conferred by article 33 (temporary use of land for construction of works) to enter upon and take temporary possession of land ceases at the end of the period mentioned in paragraph (1); but this paragraph does not prevent the undertaker from remaining in possession of land in accordance with article 33 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 TRANSIT SYSTEM

Application of existing powers

40.—(1) The following provisions of the Greater Manchester (Light Rapid Transit System) (Eccles Extension) Order 1996(**43**) apply to the authorised transit system as they apply to the transit system authorised by that Order—

- article 20 (power to construct temporary transit systems);
- article 35 (power to operate and use transit system);
- article 37 (removal of obstructions);
- article 40 (power to lop trees overhanging transit system);
- article 41 (trespass on tramroads);
- article 42 (power to make byelaws);
- article 43 (power to contract for police services);
- article 44 (powers of disposal, agreements for operation etc.) (as amended by article 43 of the Greater Manchester (Light Rapid Transit System) (Airport Extension) Order 1997)(**44**);
- article 45 (application of landlord and tenant law);
- article 46 (jurisdiction of Rail Users' Consultative Committee);
- article 47 (tramcars deemed public service vehicles).

(2) Article 4(**45**) (general duty in respect of construction and maintenance) of the Greater Manchester (Light Rapid Transit System) Order 2006 is amended by the addition at the end of the list of enactments in paragraph (1) of—

“The Transport for Greater Manchester (Light Rapid Transit System) (Trafford Park Extension) Order 2016(**46**).”

(3) Article 5 (liability in respect of repair of streets) of the Greater Manchester (Light Rapid Transit System) Order 2006 is amended by the addition at the end of the list of enactments in paragraph (1) of—

“The Transport for Greater Manchester (Light Rapid Transit System) (Trafford Park Extension) Order 2016.”

Traffic signs

41.—(1) The undertaker may, for the purposes of or in connection with the construction or operation of the authorised transit system, place or maintain traffic signs on any street in which the authorised transit system is laid or which gives access to such a street, or on any street in connection with any instrument made under article 43 (traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) The undertaker—

- (a) must consult with the traffic authority as to the placing of signs; and

(43) [S.I. 1996/2714](#).

(44) [S.I. 1997/1266](#).

(45) [S.I. 2006/405](#).

(46) [S.I. 2016/1035](#).

(b) unless the traffic authority is unwilling to do so and subject to any directions given under section 65(47) (powers and duties of traffic authorities as to placing of traffic signs) of the 1984 Act, must enter into arrangements with the traffic authority for any such signs other than traffic light signals 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 includes a power to give directions to the undertaker as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) are 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 transit system is laid or which gives access to such a street must consult with the undertaker as to the placing of any traffic sign which would affect the operation of the authorised transit system.

(5) Tramcars are to be taken to be public service vehicles for the purposes of section 122(2)(c) (exercise of functions by local authorities) of the 1984 Act.

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

Traffic regulation

42.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised transit system—

- (a) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles in the manner specified in paragraph 3 of Part 1 of Schedule 7 (traffic regulation) 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) make provision as to the direction of vehicular traffic in the manner specified in paragraph 4 of Part 2 of Schedule 7 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;
- (c) permit or prohibit vehicular access in the manner specified in paragraph 5 of Part 3 of Schedule 7 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;
- (d) make provision for vehicular speed limits in the manner specified in paragraph 6 of Part 4 of Schedule 7 to those roads specified in column (2) to the extent specified in column (3) of that Part of that Schedule; and
- (e) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, but such consent must not be unreasonably withheld, the undertaker 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 transit system—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;

(47) As amended by section 153 of the Local Government and Housing Act 1989 (c. 42); section 168(1) of, and paragraph 48 of Part 2 of Schedule 8 to, the 1991 Act; section 48 of, and paragraph 29 of Schedule 4 to, the Road Traffic Act 1991 (c. 40) and section 1(6) of, and paragraphs 70 and 82 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

- (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 or priority of vehicular traffic on any road;
- (e) make provision for vehicular speed limits on any road; and
- (f) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(3) The powers conferred by paragraphs (1) and (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised transit system for public use but subject to paragraph (6) any prohibition, restriction or other provision made under paragraph (1) or (2) may have effect both before and after the expiry of that period.

(4) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The undertaker must not exercise the powers conferred by paragraph (1) or (2) unless it has—

- (a) given not less than—
 - (i) 12 weeks' notice in writing of its intention to do so in the case of a prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention to do so in the case of a prohibition, restriction or other provision intended to have effect temporarily,

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 specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a) (i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (2)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act or, in the case of provision for vehicle speed limits, as an order under section 84(48) (speed limits on roads other than restricted roads) of that Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32(49) (power of local authorities to provide parking places) or section 45(50) (designation of paying parking places on highways) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 7) to which the prohibition, restriction or other provision is subject; and

(48) As amended by section 168(1) of, and paragraph 61 of Part 2 of Schedule 8 to, the 1991 Act; section 45 of the Road Traffic Act 1991 (c. 40) and section 1(6) of, and paragraphs 70 and 88 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(49) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51). There are other amendments to section 32 that are not relevant to this Order.

(50) As amended by sections 8 and 102 of, and paragraph 4(19)(b) of Schedule 5 and Schedule 17 to, the Local Government Act 1985 (c. 51); section 1 of the Road Traffic Regulation (Parking) Act 1986 (c. 27); section 168(1) of, and paragraph 44 of Part 2 of Schedule 8 to, the 1991 Act and section 281 of, and Part 6 of Schedule 34 to, the Greater London Authority Act 1999 (s. 29). There are other amendments to section 45 that are not relevant to this Order.

(b) except in the case of provision for vehicle speed limits, is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(51).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (2) within a period of 24 months from the opening of the authorised transit system for public use.

(8) Before exercising the powers conferred by paragraph (2) the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

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

(10) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

PART 5

PROTECTIVE PROVISIONS

Minerals

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

Saving for highway authorities

44. Nothing in this Order affects any power of a highway authority to widen, alter, divert or improve any highway along which the authorised transit system is constructed.

Arrangements with highway authorities

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

(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 must 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 must not be unreasonably withheld.

(4) Prior to seeking approval under paragraph (6), the undertaker must consult the highway authority concerned as to any works to and changes in the management of the highway network which may be required to ensure the effective integration of the authorised transit system with other forms of highway traffic and, within 28 days of being requested in writing by the undertaker to do so, the highway authority must provide the undertaker with its opinion on the subject.

(5) Prior to seeking approval under paragraph (6), the undertaker must consult the highway authority concerned as to the design of any lighting for transit system 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 transit system.

(6) Without affecting the application of sections 59(52) and 60(53) (duty of street authority to co-ordinate and undertakers to co-operate) of the 1991 Act before commencing any highway operations, the undertaker must submit to the highway authority for its approval proper and sufficient plans and must 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 is to be deemed to have approved them.

(8) In the event of any disapproval of plans by a highway authority under this paragraph, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it is to be deemed to have approved them.

(9) In submitting plans under paragraph (6), the undertaker must—

- (a) ensure, so far as reasonably practicable, that the design of any lighting for transit system 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 transit system is fully compatible with traffic signalling for other traffic users whilst achieving appropriate priority signalling for tramcars using the authorised transit system wherever practicable.

(10) Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction may be given by the highway authority to the contractors, employees or agents of the undertaker regarding the highway operations without the prior consent in writing of the undertaker but the highway authority is not liable for any additional costs which may be incurred as a result of the giving of instructions or directions under this paragraph.

(11) To facilitate liaison with the undertaker, the highway authority concerned must provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker 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 3 (street works in England and Wales) of the 1991 Act apply, must be completed in accordance with

(52) As amended by section 42 of the Traffic Management Act 2004 (c. 18).

(53) As amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

the reasonable requirements of the highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration under article 53 (arbitration).

(13) The undertaker must 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 any connected apparatus, 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 or the access to any such property or work.

(14) The undertaker must 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 deposit any soil or materials on any highway except within a hoarding.

(15) The undertaker must, if reasonably so required by the highway authority, provide and maintain during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the authorised works, temporary ramps for vehicular traffic or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with the standard recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs Regulations and General Directions 2002⁽⁵⁴⁾ in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

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

(17) The undertaker must 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 any connected apparatus or any other property or work belonging to, or under the jurisdiction or control of, the highway authority on or under any highway, or maintainable by them, which may be caused by, or in consequence of, any act or default of the undertaker, its contractors, servants or agents.

(18) Unless otherwise agreed between the parties any difference arising between the undertaker and the highway authority under this article (other than a difference as to its meaning or construction) is to be determined by arbitration under article 53 (arbitration).

Protection of public utilities

46. The provisions of Schedule 8 (protection of public utilities) have effect for the protection of public utilities.

Protection of navigation

47. The provisions of Schedule 9 (protection of navigation) have effect for the protection of the Manchester Ship Canal Company Limited and the Bridgewater Canal Company Limited.

⁽⁵⁴⁾ S.I. 2002/3113 (subsequently revoked and replaced by S.I. 2016/362).

PART 6

MISCELLANEOUS AND GENERAL

Disclosure of confidential information

48. A person who—

- (a) enters a manufactory, workshop or workplace under article 22 (works to safeguard buildings and the operation of the authorised transit system) or article 24 (power to survey and investigate land, etc.); and
- (b) discloses to any person any information obtained under paragraph (a) and relating to any manufacturing process or trade secret,

is 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 that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Defence to proceedings in respect of statutory nuisance

49.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990⁽⁵⁵⁾ in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act, no order may be made, and no fine imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the undertaker 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 (control of noise on construction sites), or a consent given under section 61⁽⁵⁶⁾ (prior consent for work on construction sites), of the Control of Pollution Act 1974⁽⁵⁷⁾; or
- (b) that the nuisance is a consequence of the operation or maintenance of the authorised transit system and that it cannot reasonably be avoided.

(2) 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) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker 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 do not affect any rule of common law having similar effect.

Certification of plans, etc.

50. The undertaker must, 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 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 plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

⁽⁵⁵⁾ 1990 c. 43.

⁽⁵⁶⁾ Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

⁽⁵⁷⁾ 1974 c. 40.

Service of notices

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(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 (references to service by post) of the Interpretation Act 1978⁽⁵⁸⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person 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, the last known address of that person 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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person 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) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission, the requirement is taken to be fulfilled only where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document, the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

52. Compensation is not 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.

Arbitration

53. Except where otherwise expressly provided for in this Order and 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) must 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

Martin Woods
Head of the Transport and Works Act Orders
Unit
Department for Transport

3rd November 2016