

201[●] No.

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Midland Metro (Birmingham Eastside Extension) Order
201[●]

Made - - - - - ***
Coming into force - - - - - ***

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An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(a) for an Order under sections 1 and 5 of the Transport and Works Act 1992(b) (“the 1992 Act”).

[The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.]

The Secretary of State[, having considered the objections made and not withdrawn and the report of the person who held the inquiry,] has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on [] 201[●].

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 13 and 15 to 17 of Schedule 1 to the 1992 Act, makes the following Order—

(a) S.I. 2006/1466. amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755.
(b) 1992 c.42; section 1 was amended by the Planning Act 2008 (c.29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Midland Metro (Birmingham Eastside Extension) Order 201[●] and comes into force on [] 201[●].

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(a);
- “the 1965 Act” means the Compulsory Purchase Act 1965(b);
- “the 1980 Act” means the Highways Act 1980(c);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(d);
- “the 1989 Act” means the Midland Metro Act 1989(e);
- “the 1990 Act” means the Town and Country Planning Act 1990(f);
- “the 1991 Act” means the New Roads and Street Works Act 1991(g);
- “address” includes any number or address used for the purposes of electronic transmission;
- “the authorised street tramway” means any street tramway authorised by this Order;
- “the authorised tramroad” means any tramroad authorised by this Order;
- “the authorised tramway” means the tramway (consisting of the authorised street tramway and the authorised tramroad) 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 Authority” means the West Midlands Combined Authority established under article 3 of the West Midlands Combined Authority Order 2016(h)
- “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;
- “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;
- “cycle track” has the same meaning as in the 1980 Act;
- “electric line” has the meaning given by section 64(1) of the Electricity Act 1989(i);
- “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 deviation” means the limits of lateral deviation for the scheduled works mentioned in article 7.(1)(a) and (2) (power to deviate);

(a) 1961 c.33.
(b) 1965 c.56.
(c) 1980 c.66.
(d) 1984 c.27.
(e) 1989 c.xv.
(f) 1990 c.8.
(g) 1991 c.22. As amended by the Traffic Management Act 2004 c.18.
(h) S.I. 2016/653.
(i) 1989 c.29.

“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 the Acquisition of Land Act 1981(a);

“parking place” has the same meaning as in section 32 (powers 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, and the limits of land with rights to attach equipment to buildings, 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 (street works in England and Wales) of the 1991 Act;

“street tramway” means any part of a tramway 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 7 (land of which temporary possession may be taken);

“the traffic regulation plan” means the plan certified by the Secretary of State as the traffic regulation plan 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 tramway;

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

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

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

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

“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 under or on land or in the air space over its surface.

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

(4) References in this Order to points identified by letters, with or without numbers, or by numbers, are to be construed as references to the points so marked on the works and land plans or, in the case of Schedule 8 (traffic regulation), to the points so marked on the traffic regulation plan.

(5) All areas, 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.

(a) 1981 c.67.

Incorporation of the Railways Clauses Consolidation Act 1845

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(a) are incorporated into this Order as follows—

- sections 68 and 69 (accommodation works by company);
- section 71 (additional accommodation works by owners);
- sections 72 and 73 (supplementary provisions relating to accommodation works);
- section 75 (omission to fasten gates);
- sections 87 and 88 (contracts with other companies);
- section 97 (default in payment of tolls);
- section 103 (refusal to quit carriage at destination);
- section 105 (carriage of dangerous goods on railway);
- section 144 (defacing of boards); and
- section 145 (recovery of penalties).

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

- “goods” includes any thing conveyed on the authorised tramway;
- “lease” includes an agreement for a lease;
- “prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;
- “the railway” means the authorised tramroads and the authorised street tramways, together with any authorised works ancillary to those street tramways;
- “the special Act” means this Order; and
- “toll” includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any authorised tramway to be constructed under this Order.

(3) In section 69 of the 1845 Act, as incorporated in this Order, for the words “determined by two justices” to the end, substitute the words “referred to arbitration”.

(4) In section 71 of the 1845 Act, as incorporated in this Order, omit the words “, or directed by such justices to be made by the Company,” and for the words “authorised by two justices” substitute the words “determined by arbitration”.

(5) Any difference arising under section 72 of the 1845 Act, as incorporated in this Order, must be referred to arbitration.

(6) Sections 68, 69, 71 to 73 and 75 of the 1845 Act, as incorporated in this Order, only apply to the railways comprised in the authorised tramroads and any authorised works ancillary to those tramroads.

Application of the Midland Metro Acts

4.—(1) The authorised tramway is to be treated as part of the Metro (as defined in the Midland Metro Acts) for—

- (a) the purposes of the following provisions of the 1989 Act—
 - section 3(3) (incorporation and application of enactments relating to railway);
 - section 16 (agreements with British Railways Board);
 - section 17 (transport consultative committee);
 - section 25 (provisions as to use of electrical energy);
 - section 46 (power to lop trees overhanging railway);

(a) 1845 c.20.

section 47 (removal of obstructions);
section 48 (for better prevention of trespass on railways);
section 49 (byelaws relating to metro);
section 50 (modification of railway regulation enactments);
section 51 (carriages on metro deemed public services vehicles);
section 52 (power to contract for police); and
section 54 (powers of disposal, agreements for operation, etc.); and

(b) the purposes of section 18 (application of landlord and tenant law to metro leases) of the (No. 2) 1992 Act,

but it is not to be so treated for—

(i) the purposes of the following provisions of the 1989 Act—

section 5(4) and (5) (application of provisions of Public Utilities Street Works Act 1950 and Road Traffic Regulation Act 1984);

section 15 (gauges of railways and restrictions on working);

section 24 (attachment of brackets, etc., to buildings for purposes of works);

section 44 (insulation against noise); and

section 45 (orders for insulating new buildings); and

(ii) section 24 (authorisation of new level crossings) of the 1992 Act.

(2) The authorised tramway is to be treated as part of the Metro (as defined in the Midland Metro Acts) for the purposes of sections 4 to 7 (provisions relating to penalty fares) of the Midland Metro (Penalty Fares) Act 1991^(a) and of any order made from time to time under sections 3(2) (operations of Act) or 5(2) (penalty fares) of that Act (whether made before or after this Order comes into force), and expressions defined in section 2 (interpretation) of that Act have effect accordingly.

(3) In the application of the Midland Metro Acts to this Order—

(a) references to the railways board in section 16 (agreements with British Railways Board) and section 17 (transport consultative committee) of the 1989 Act are to be treated as references to a person holding a licence under section 8 (licences) of the 1993 Act or a person exempt, by virtue of section 7 (exemptions from section 6) of the 1993 Act, from the requirement to be authorised by such a licence;

(b) the reference to section 56 (the Transport Consultative Committee) of the Transport Act 1962^(b) in section 17(1) (Transport consultative committee) of the 1989 Act is to be treated as a reference to section 25 (proposal to discontinue excluded services) of the Railways Act 2005^(c) and for the words “as if” until the end of that subsection substitute the words “these services were special procedure excluded services for the purposes of that section”;

(c) references to the railway in section 46(1) (power to lop trees overhanging railway) of the 1989 Act are to be treated as including the authorised tramway;

(d) the reference in section 47 (removal of obstructions) of the 1989 Act to any tramway is to be treated as reference to the authorised street tramway; and

(e) references to railway premises in section 49 (byelaws relating to the Metro) and section 52 (power to contract for police) of the 1989 Act are to be treated as including any premises of the Authority used in connection with the operation or maintenance of the authorised tramway.

(4) Section 8(4) (further works and powers) of the 1989 Act has effect for the purposes of the authorised street tramways as it has effect for the purposes of the tramways authorised by that Act.

(a) 1991 c.ii.
(b) 1962 c.46.
(c) 2005 c.14.

(5) In this article—

“the 1992 Act” means the Midland Metro Act 1992(a);

“the 1993 Act” means the Railways Act 1993(b);

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

“the Midland Metro Acts” means the 1989 Act, the Midland Metro (Penalty Fares) Act 1991, the 1992 Act and the (No. 2) 1992 Act.

Application of the 1991 Act

5.—(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 of the 1980 Act (dual carriageways and roundabouts) of the 1980 Act or section 184 of that Act (vehicle crossings) of that Act.

(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 highway works by virtue of paragraph (1), to be construed as references to the Authority.

(3) The provisions of the 1991 Act mentioned in paragraph (4) (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 Authority under the powers conferred by article 13.(1) (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

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

section 54 (advance notice of certain works), subject to paragraph (5);

section 55 (notice of starting date of works), subject to paragraph (5);

section 57 (notice of emergency works);

section 59 (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 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.

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) 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.

(6) Nothing in article 15.(1) (construction and maintenance of new, altered or diverted highways)—

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

(a) 1992 c.vii.
(b) 1993 c.34.
(c) 1992 c.viii.

to 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 as respects which the provisions of Part 3 of the 1991 Act apply.

PART 2 WORKS PROVISIONS

Principal powers

Power to construct and maintain works

6.—(1) The Authority may construct and maintain the scheduled works.

(2) Subject to article 7.(1) (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 Authority 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 tramway;
- (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 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 Authority 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 Authority 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 Authority 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 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.

(9) Regulation 12(1)(a) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2010^(a) in relation to the carrying on of a relevant flood risk activity, section 23 (prohibition on obstructions etc in watercourses) of the Land Drainage Act 1991^(b) and any byelaws made under that Act or the Water Resources Act 1991^(c) do not apply to anything done under or in pursuance of this Order.

(10) In paragraph (9) “relevant flood risk activity” means anything done under or in pursuance of this Order within paragraph 3(1)(a), (b) or (c) of Schedule 23ZA (flood risk activities and excluded flood risk activities) to the Environmental Permitting (England and Wales) Regulations 2010.

(11) Regardless of the powers conferred by paragraph (3)(e) the Authority 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 Authority for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

Power to deviate

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

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

(3) The Authority 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 part of the authorised street tramway without the consent of the street authority, but such consent must not be unreasonably withheld.

Designation of works

8.—(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 so constructed 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 tramway 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 tramway 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.

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

(b) 1991 c.59.

(c) 1991 c.57.

Power to alter layout, etc., of streets

9.—(1) The Authority 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 6.(1) (power to construct and maintain works) or paragraph (1) but subject to paragraph (3) the Authority may, for the purpose of constructing, maintaining or using the authorised street tramway, alter the layout of any street along which the tramway 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 Authority 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^(a) 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 tramway; 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

10.—(1) The Authority may, for the purposes of or in connection with the construction, maintenance and use of the authorised street tramway, place and maintain in any street in which the tramway 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.

Power to execute street works

11.—(1) The Authority may, for the purpose of exercising the powers conferred by article 10.(1) (power to keep apparatus in streets) or any other provision of this Order, enter upon any street and

(a) S.I. 1999/1026.

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.

Permanent stopping up of streets

12.—(1) Subject to the provisions of this article, the Authority may, in connection with the construction of the authorised works, stop up each of the streets mentioned in columns (1) and (2) of Parts 1 and 2 of Schedule 3 to this Order to the extent specified, by reference to the letters shown on the works plans, in column (3) of Parts 1 and 2 of that Schedule.

(2) No street specified in columns (1) to (3) of Part 1 of Schedule 3 (being a street to be stopped up for which a substitute is to be provided) can be wholly or partly stopped up under this article until the date of practical completion of the new street to be substituted for it (as specified in relation to it in column (4) of that Part of that Schedule) and the new street is open for use.

(3) The date of practical completion of a new street for the purposes of paragraph (2) will be determined by the street authority or in the event of dispute will be determined by arbitration.

(4) No part of a street specified in columns (1) to (3) of Part 2 of Schedule 3 to this Order (being a street to be stopped up for which no substitute is to be provided) can be stopped up under this article unless all the land which abuts it falls within one or more of the following categories, namely—

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

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

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the Authority may, without making any payment, 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 Authority.

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

(7) This article is subject to paragraph 2.(1) of Schedule 9 to this Order.

Temporary stopping up of streets

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

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the Authority may use any street stopped up under the powers conferred by this article as a temporary working site.

(3) The Authority 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 Authority may exercise the powers conferred by this article in relation to the streets specified in Schedule 4 (streets to be temporarily stopped up).

(5) The Authority 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

14. The Authority 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 Authority 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.

Construction and maintenance of new, altered or diverted highways

15.—(1) Any highway to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and must, unless otherwise agreed by the highway authority and the Authority, be maintained by and at the expense of the Authority for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

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

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge carrying a highway over a tramroad of the Authority or carrying a tramroad of the Authority over a highway and except as provided in those paragraphs the Authority is not liable to maintain the surface of any highway in, on or over which the scheduled works are constructed, or the immediate approaches to any such highway, unless otherwise agreed with the highway authority.

(4) In any action against the Authority in respect of loss or damage resulting from any failure by it to maintain a highway 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 Authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous to traffic.

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

- (a) the character of the highway including its use for a tramway, and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a highway of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the highway;
- (d) whether the Authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway; and

- (e) where the Authority could not reasonably have been expected to repair that part of the highway 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 Authority had arranged for a competent person to carry out or supervise the maintenance of that part of the highway to which the action relates unless it is also proved that the Authority had given the competent person proper instructions with regard to the maintenance of the highway and that the competent person had carried out those instructions.

Restoration of streets if street tramway discontinued

16. If the Authority abandons the construction of, or permanently ceases to operate any of, the authorised street tramway (“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

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

- (a) the construction of any new street (including any structure carrying the street over or under a tramroad) under the powers conferred by this Order;
- (b) the 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 the authorised tramway is laid, or of the structure of any bridge or tunnel carrying a street over or under the authorised tramway;
- (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 11.(1) (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

18.—(1) The Authority may construct and maintain the authorised tramway 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 Authority 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) of the 1984 Act as having been placed as provided by that Act.

(4) Without limitation on the scope of article 9.(1) (power to alter layout, etc., of streets), the Authority 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 Authority 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 tramroad crosses a highway or other road on the level under the powers conferred by this article; and

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

Supplemental powers

Attachment of equipment to buildings

19.—(1) The Authority may affix to any building constructed at any time within the permanent limits—

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

Discharge of water

20.—(1) The Authority 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 tramway 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 of the Water Industry Act 1991^(a).

(3) The Authority 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 Authority 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 Authority 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 Authority 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) of the Environmental Permitting (England and Wales) Regulations 2010^(b).

(a) 1991 c.56.

(b) S.I. 2010/675.

(8) In this article—

“public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, or a local authority; and

other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991(a) have the same meaning as in that Act.

Works to safeguard buildings and the operation of the authorised tramway

21.—(1) Subject to the following provisions of this article, the Authority 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 Authority 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 Authority may, subject to paragraph (5), 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 Authority may (subject to paragraphs (5) and (6))—

- (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 Authority 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), (5)(c) or (5)(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 54 (arbitration).

(7) The Authority 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,

(a) 1991 c.57.

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

(9) Without affecting article 38 (no double recovery), nothing in this article relieves the Authority from any liability to pay compensation under section 10(2) 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 tramway or to prevent or minimise the risk of such operation being disrupted.

Power to survey and investigate land, etc.

22.—(1) The Authority may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits, any street along which the authorised street tramway 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 Authority 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 Authority—

- (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,
- (c) but such consent must not be unreasonably withheld.

(5) The Authority 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 (determination of questions of disputed compensation) 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(a).

Mode of construction and operation of tramway

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

(2) The tramway must be constructed on a nominal gauge of 1,435 millimetres.

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

(4) When considering what measures are required under paragraph (3) the Authority 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 street tramway has been constructed in a street, works by any person which affect or are likely to affect the Authority's obligations under paragraph (3), including works to any street surfaces and works affecting any equipment or apparatus placed in the street under article 10.(1) (power to keep apparatus in streets) must not be carried out without the consent of the Authority, which may be given subject to such reasonable terms and conditions as the Authority may require but must not be unreasonably withheld.

Obstruction of construction of authorised works

24. Any person who, without reasonable excuse—

- (a) obstructs another person acting under the authority of the Authority 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 Authority,

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

Power to construct temporary tramways

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

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

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

(3) The provisions of articles 9.(2) (power to alter layout, etc., of streets), 10.(1) (power to keep apparatus in streets), 11.(1) (power to execute street works) and 44.(1) (traffic signs) apply in relation to temporary tramways laid under the powers conferred by this article as they apply in relation to authorised street tramways.

Removal of human remains

26.—(1) In this article, “specified land” means the land within the limits of deviation.

(a) 1979 c.46.

(2) Before the Authority carries out any development or works that will or may disturb any human remains in the specified land, it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

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

- (a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the authorised works; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3), the Authority must send a copy of the notice to Birmingham City Council.

(5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the Authority of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the Authority a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the Authority is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The Authority must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph is given to the Authority in respect of any remains in the specified land;
- (b) notice under paragraph (5) is given within the period of 56 days and no application is made under paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the Authority, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which a notice under paragraph (5) relates cannot be identified,

subject to paragraph (10), the Authority must remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the Authority thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the Authority is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the Authority must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the Authority to the Registrar-General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the Authority to Birmingham City Council.

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

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

(14) Section 25 of the Burial Act 1857(a) (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

(15) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(b) does not apply to the authorised works.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

27.—(1) The Authority 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 tramway undertaking.

(2) This article is subject to article 31 (new rights only to be acquired in certain lands).

Application of Part 1 of the 1965 Act

28.—(1) Part 1 (compulsory purchase under the Acquisition of Land Act 1946) 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(c) 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 section 4 (which provides a time limit for compulsory purchase of land) was omitted.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

29.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(d) 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—

(a) 1857 c.81. Section 25 was substituted by section 2 of Church of England (Miscellaneous Provisions) Measure 2014 (2014 No. 1).
(b) S.I. 1950/792.
(c) 1981 c.67.
(d) 1981 c.66.

“(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
- (a) 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) Omit section 5A (time limit for general vesting declaration).

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

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

Powers to acquire new rights

30.—(1) The Authority 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 6 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the Authority acquires a right under paragraph (1) the Authority is not required to acquire a greater interest in that land.

(3) Schedule 6 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.

New rights only to be acquired in certain lands

31. In the case of land specified in Schedule 5 (acquisition of new rights only) the Authority’s powers of compulsory acquisition under article 27.(1) (power to acquire land) and article 30.(1) (power to acquire new rights) are limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of—

- (a) exercising the powers conferred by article 19.(1) (attachment of equipment to buildings) and using and maintaining any apparatus affixed in the exercise of those powers; or
- (b) creating rights of way over any land within the permanent limits.

Rights under or over streets

32.—(1) The Authority 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 tramway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the Authority 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 Authority 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.

Special category land

33.—(1) Upon entry by the Authority onto the special category land under article (1) (power to acquire land) or article (1) (powers to acquire new rights), so much of the special category land as is required for the purposes of the exercise by the Authority of the order rights is discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article—

“the order rights” means rights exercisable over the special category land by the Authority under article (1) (power to acquire land) or article (1) (powers to acquire new rights) but being subject to article 31 (new rights only to be acquired in certain lands); and

“the special category land” means the land identified as forming open space and numbered [XX] in the book of reference and on [the works and land plans].

Temporary possession of land

Temporary use of land for construction of works

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

(a) enter upon and take temporary possession of—

- (i) so much of the land shown on the works and land plans as lying within the temporary limits for the purpose specified in relation to that land in column (3) of Schedule 7 (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 (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 of paragraph (1) the Authority must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Authority 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 7; 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 Authority 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 Authority must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Authority is not required to replace a building removed under this article.

(5) The Authority 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 (determination of questions of disputed compensation) of the 1961 Act.

(7) Without affecting article 38 (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 (5).

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

(9) 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).

Temporary use of land for maintenance of works

35.—(1) Subject to paragraph (2), at any time during the maintenance period relating to the scheduled works, the Authority 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 Authority 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 Authority must serve notice of the intended entry on the owners and occupiers of the land.

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

(6) The Authority 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 (determination of questions of disputed compensation) of the 1961 Act.

(8) Without affecting article 38 (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 Authority takes possession of land under this article, the Authority 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

36.—(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

37.—(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.(1) (powers 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.

No double recovery

38. 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.

Supplementary

Acquisition of part of certain properties

39.—(1) This article applies instead of section 8(1) (other provisions as to divided land) of the 1965 Act (as applied to this Order by article 28.(1) (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 Authority 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 must 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 must sell only the land subject to the notice to treat is, unless the Authority 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,
- (c) the owner must 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,
- (c) 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 Authority is authorised to acquire compulsorily under this Order.

(8) If the Authority 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 Authority 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 Authority 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 only part of a house, building or manufactory or of land consisting of a house with a park or garden, the Authority 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

40.—(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 Authority, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Authority 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 Authority 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 Authority.

(3) Subject to the provisions of this article, all private rights of way over land of which the Authority takes temporary possession under this Order are suspended and unenforceable for as long as the Authority 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 Authority before the completion of the acquisition of the land, the Authority's appropriation of it, the Authority's entry onto it or the Authority'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 Authority 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

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 28.(1) (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.(1) (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The power conferred by article 34.(1) (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 Authority from remaining in possession of land in accordance with article 34.(1) 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 TRAMWAY SYSTEM

Power to operate and use tramway system

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

(2) Subject to paragraph (4) and section 54 of the 1989 Act (as applied by article 4.(1) (application of the Midland Metro Acts)), the Authority, for the purpose of operating the authorised tramway, has the exclusive right—

- (a) to use the rails, foundations, cables, masts overhead wires and other apparatus used for the operation of the authorised tramway; and
- (b) to occupy that part of the street in which that apparatus is situated.

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

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

Power to charge fares

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

Traffic signs

44.—(1) The Authority may, for the purposes of, or in connection with the construction or operation of the authorised street tramway, place or maintain traffic signs on any street in which the authorised street tramway is laid or which gives access to such a street, or on any street in connection with any instrument made under article 45.(1) (traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) The Authority—

- (a) must consult with the traffic authority as to the placing of signs; and
- (b) unless the traffic authority is unwilling to do so and subject to any directions given under section 65 (powers and duties of highway 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 Authority 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 street tramway is laid or which gives access to such a street must consult with the Authority as to the placing of any traffic sign which would affect the operation of the authorised street tramway.

(5) Tramcars are 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

45.—(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 Authority may, in connection with the construction or operation of the authorised tramway, at any time prior to the expiry of 12 months from the opening of the authorised tramway, and in accordance with the traffic regulation plan—

- (a) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles in the manner specified in Part 1 of Schedule 8 (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 Part 2 of Schedule 8 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 Part 3 of Schedule 8 to those roads specified in column (2) and along the lengths, between the points and as respects direction to the extent specified in column (3) of that Part of that Schedule; and
- (d) 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 Authority 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 is situated, which consent must not be unreasonably withheld, the Authority may, in so far as necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised tramway—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) 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 Authority.

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

(4) The Authority must not exercise the powers conferred by paragraphs (1) and (2) unless it has given not less than 12 weeks' notice in writing of its intention to do so to the chief officer of the police in whose area the road is situated.

(5) Any prohibition, restriction or other provision made by the Authority under this article has effect as if duly made by the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 8) to which the prohibition, restriction or other provision is subject.

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

(7) Any prohibition, restriction or other provision made under this article may be varied or revoked from time to time by subsequent exercise of the powers conferred by this article by the Authority.

PART 5

MISCELLANEOUS AND GENERAL

Planning permission

46. Planning permission which is deemed by a direction under section 90(2A) (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.

Statutory undertakers, etc.

47. The provisions of Schedule [X] (provisions relating to statutory undertakers, etc.) have effect.

Minerals

48. 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 street tramway 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 street tramway resulting from the exercise of any such right.

Saving for highway authorities

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

Disclosure of confidential information

50. A person who—

- (a) enters a factory, workshop or workplace under article 21.(1) (works to safeguard buildings and the operation of the authorised tramway) or article 22.(1) (power to survey and investigate land, etc.); and
- (b) discloses to any person any information obtained under sub-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

51.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) 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 Authority 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 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b); or
- (b) that the nuisance is a consequence of the operation or maintenance of the authorised tramway 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) do not apply where the consent relates to the use of premises by the Authority 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.

52. The Authority 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 plan 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 plan 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.

Service of notices

53.—(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 of the Interpretation Act 1978(c) 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) 1990 c.43.
(b) 1974 c.40.
(c) 1978 c.30.

- (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.

Arbitration

54. 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 giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Repeals of the 1989 Act

55. Section 15(5) of the 1989 Act is repealed.

For protection of [XXX]

56. The provisions of Schedule [XX] (for the protection of [XXX]) have effect.

Signed by authority of the Secretary of State

Address
Date

Name
Title
Department for Transport

SCHEDULES

SCHEDULE 1

Article 2(1)

SCHEDULED WORKS

In the City of Birmingham—

<i>(1)</i> <i>Number of Work</i>	<i>(2)</i> <i>Description of Work</i>
Work No. 1	A tramway 320 metres in length (double line) commencing at the existing Midland Metro lines at the junction of Upper Bull Street and Corporation Street and running south east along Lower Bull Street, before turning west at the junction with Dale End to run through land currently occupied by buildings at 1 to 7 Kings Parade, continuing along New Meeting Street and Albert Street before terminating at a point [***] on the south-west bound carriageway of Moor Street Queensway. This work includes construction of an underground chamber for the purposes of creating a track paralleling hut on the corner of Corporation Street and Lower Bull Street and the regrading of Moor Street Queensway.
Work No. 2	A tramway 397 metres in length (double line) commencing at the termination of Work No. 1 and running in a north-easterly direction across land forming part of Eastside City Park before turning south to join New Canal Street, terminating at the northern side of the railway viaduct over New Canal Street [*] metres north of the junction with Fazeley Street. The work includes the creation of a new highway access between Hotel La Tour and Masshouse Lane and a new footway approximately [*] metres in length on land adjacent to the hotel.
Work No. 3	A tramway 512 metres in length (double line) commencing at the termination of Work No. 2 passing beneath the railway viaduct and running along New Canal Street, continuing along Meriden Street to terminate at a point [*] metres south of the junction of Meriden Street and Digbeth High Street. This work includes the partial demolition of the South and City College building to enable the creation of a new section of highway at the corner of Meriden Street and Digbeth High Street.
Work No. 3A	Installation of an electricity sub-station and electricity cabinets on land off Meriden Street.
Work No. 4	A tramway 428 metres in length (double line) commencing at the termination of Work No. 3 and running south-east along Digbeth High Street to terminate at a point on High Street Deritend at the junction with Gibb Street. The work includes alterations to the junction at Alcester Street and High Street Deritend involving accommodation works for the realignment of the highway.

SCHEDULE 2

Article [X]

STREETS SUBJECT TO ALTERATION OF LAYOUT

SCHEDULE 3

Article [X]

STREETS TO BE PERMANENTLY STOPPED UP

SCHEDULE 4

Article [X]

STREETS TO BE TEMPORARILY STOPPED UP

SCHEDULE 5
ACQUISITION OF NEW RIGHTS ONLY

Article [X]

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973((a)) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” substitute “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable”.

(3) For section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 (other provisions as to divided land) of the 1965 Act as substituted by paragraph 5, substitute—

“(1) In determining under section 8(1) or 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over land consisting of a house, building, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or
- (b) a right over land consisting of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right but also the use to be made of the right proposed to be acquired, and, in a case where the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

(a) 1973 c.26.

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (other provisions as to divided land) there is substituted the following—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Chamber of the Upper Tribunal (“the tribunal”); and .
- (b) before the tribunal has determined that question, the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that interest, and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Midland Metro (Birmingham Eastside Extension) Order 201[*](a)(“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection affects any other power of the authority to withdraw the notice.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

(a) S.I. [*]/[*].

7. Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 7

Article [X]

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

SCHEDULE 8
TRAFFIC REGULATION

Article [X]

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers, etc. on land acquired

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274 (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) of the 1990 Act apply in relation to any land which has been acquired under this Order, or which is held by the Authority and is appropriated or used (or about to be used) by it for the purposes of this Order or for purposes connected with those provisions; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under section 271 and 272, and sections 279(2) to (4), 280 and 282 which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1)—

- (a) references to the appropriate Minister are references to the Secretary of State;
- (b) references to the purpose of carrying out any development with a view to which land was acquired or appropriated are references to the purpose of carrying out the authorised works; and
- (c) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired, appropriated or used as mentioned in sub-paragraph (1).

(3) Where any apparatus of public utility undertakers or of an operator of an electronic communications code network is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Authority compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer, but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer, or
- (b) the owner of a private sewer which communicated with that sewer,
- (c) is entitled to recover from the Authority compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making that person's drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which paragraph 2, or Part 3 of the 1991 Act applies (including that Part as applied by article 5.(1) (application of the 1991 Act)).

(6) In this paragraph—

- (a) “electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984(a);

(a) 1984 c.12; Schedule 2 was amended by the New Roads and Street Works Act 1991, Schedule 8 paragraphs 113 and 115, and the Communications Act 2003, Schedule 3.

- (b) “electronic communications code network” means an electronic communications network within the meaning of the Communications Act 2003(a) to which the electronic communications code applies; and
- (c) “public utility undertakers” has the same meaning as the Highways Act 1980(b).

Apparatus of statutory undertakers, etc, in stopped up streets

2.—(1) Where a street is stopped up under this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street has the same powers and rights in respect of that apparatus, subject to the provision of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may where reasonably necessary for the efficient operation of the undertaking of the statutory utility and, if reasonably requested so to do by the Authority, must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in that other position.

(3) Subject to the following provisions of this paragraph, the Authority must pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of relocation works.

(4) If in the course of the execution of relocation works under sub-paragraph (2)—

- (a) apparatus of better type, of greater capacity or of greater dimension is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,
- (c) and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Authority, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) will be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory utility any

(a) 2003 c.21.
(b) 1980 c.66.

financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) do not apply where the authorised works constitute major transport works or major highway works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act (including that Part as applied by article (1) (application of the 1991 Act)), but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of costs of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the Authority and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- (b) “relocation works” means works executed, or apparatus provided, under sub-paragraph (2); and
- (c) “statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or an operator of an electronic communications code network as defined in paragraph 1.(6).

Application of telecommunications code

3.—(1) Paragraph 21 of the electronic communications code does not apply for the purposes of the authorised works to the extent that such works are regulated by Part 11 of the 1990 Act, sections 84 and 85 of the 1991 Act (or regulations made under section 85 of that Act), paragraph 2 or sub-paragraph (3).

(2) Paragraph 23 of the electronic communications code applies for the purposes of the authorised works, except—

- (a) in so far as such works are regulated by the 1991 Act or any regulation made under that Act; or
- (b) where the Authority exercises a right under subsection (4)(b) of section 272 of the 1990 Act or under an order made under that section to remove apparatus.

(3) The temporary stopping up, alteration or diversion of any highway under article 13.(1) (temporary stopping up of streets) does not affect any right of an operator of an electronic communications code network under paragraph 9 of the electronic communications code in respect of any apparatus which at the time of the stopping up or diversion is in the highway.

(4) In this paragraph—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act; and
- (b) “electronic communications code” and “electronic communications code network” have the same meaning as in paragraph 1.(6).

SCHEDULE 10
FOR THE PROTECTION OF [XXX]

Article [X]

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises West Midlands Combined Authority to construct, operate and maintain an extension to the Midland Metro tramway system in Birmingham city centre from the junction of Bull Street and Corporation Street, running east along Lower Bull Street and into Albert Street, across Moor Street Queensway, continuing south under the proposed new High Speed 2 station at Curzon Street and along New Canal Street and Meridien Street, before continuing east along High Street Deritend where the system terminates west of Heath Mill Lane.

The Order authorises the compulsory acquisition and the temporary use of land for the purposes of the works and confers other powers in connection with the construction, operation and maintenance of the works.

A copy of the works and land plans, the traffic regulation plan and the book of reference mentioned in the Order and certified in accordance with article 52 (certification of plans, etc.) may be inspected free of charge during normal working hours at the offices of West Midlands Combined Authority at 16 Summer Lane, Birmingham, B19 3SD.

201[●] No.

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Midland Metro (Birmingham Eastside Extension) Order
201[●]

PINSENT MASONS LLP

30 Crown Place

Earl Street

London EC2A 4ES

Solicitors and Parliamentary Agents