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STATUTORY INSTRUMENTS

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**2005 No. 1794**

The Midland Metro (Birmingham City  
Centre Extension, etc.) Order 2005

PART 2

WORKS PROVISIONS

*Streets*

**Power to alter layout, etc. of streets**

9.—(1) The Executive may alter the layout of, and carry out other ancillary works in, any street in the City specified in column (1) of Schedule 3 to this Order in the manner specified in relation to that street in column (2) of that Schedule.

(2) The Executive may remove the kerbs separating the footway from the carriageway in any part of Bull Street, Corporation Street, Stephenson Place, Stephenson Street or Pinfold Street in the City along or adjacent to which any part of the authorised tramway is or is to be constructed.

(3) Without prejudice to the powers conferred by article 6 or paragraphs (1) and (2) but subject to paragraph (4)(a), the Executive may for the purpose of constructing, maintaining or using any authorised street tramway alter the layout of any street in the City along which the tramway is or is to be laid, and the layout of any street adjacent to such a street; and, without prejudice to the generality of the foregoing, the Executive may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (c) construct, alter or remove traffic islands and central reserves;
- (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 to the carriageway of the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the tramway;
- (f) make and maintain crossovers, sidings or passing places; and
- (g) carry out works for the provision or alteration of parking places.

(4) The following shall require the consent of the street authority—

- (a) the exercise of the powers conferred by paragraph (3);
- (b) the exercise of the power to deviate conferred by article 7(1)(b) with respect to the construction or maintenance of a scheduled work comprising a street tramway, where it would require the alteration of the level of the carriageway of the street carrying the tramway;

- (c) the exercise of the power to deviate conferred by article 7(1)(b) with respect to the construction or maintenance of a scheduled work comprising the alteration of the level or alignment of a highway; or
  - (d) the exercise of the power conferred by article 10 with respect to the placing in the street of supports for overhead line equipment for any authorised street tramway.
- (5) Consent under paragraph (4) shall not be unreasonably withheld.

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

**10.**—(1) The Executive may, subject to article 9(4)(d), for the purposes of or in connection with the construction, maintenance and use of any authorised street tramway, place and maintain in any street in which the tramway is, or is to be laid and in any street having a junction with such a street any work, equipment or apparatus including but without prejudice to the generality of the foregoing, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part III of the 1991 Act;
- (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989(1); and
- (c) the reference to any work, equipment or apparatus in a street includes a reference to any work, equipment or apparatus under, over, along or upon the street.

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

**11.** The Executive may, for the purpose of exercising the powers conferred by article 10 and the other provisions of this Order, enter upon any street in which any authorised street tramway is or is to be laid and any street having a junction with such a street, and may execute any works required for or incidental to the exercise of those powers including, without prejudice to the generality of the foregoing, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

### **Permanent stopping up of means of access**

**12.**—(1) The Executive may stop up and discontinue the following—

- (a) at point E25, the private means of vehicular access to Edgbaston Shopping Centre car park, and
- (b) between points E26 and E27, the private means of vehicular access to the premises at 54 Hagley Road;

and it may carry out any incidental operations within the Order limits for those purposes.

(2) Any person who suffers loss by a stopping up authorised by paragraph (1) shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

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

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

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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(1) 1989 c. 29.

(2) The Executive shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) The Executive shall not exercise the powers of this article without the consent of the street authority, but such consent shall not be unreasonably withheld.

#### **Access to works**

**14.**—(1) The Executive may, for the purposes of the construction or operation of the scheduled works, form and lay out means of access, or improve existing means of access—

- (a) at the points shown on the works plans; or
- (b) in such location or locations within the Order limits as may be approved by the highway authority.

(2) Approval of the highway authority under paragraph (1)(b) shall not be unreasonably withheld.

#### **Construction and maintenance of new or altered highways**

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

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge carrying a highway over a tramroad of the Executive or carrying a tramroad of the Executive over a highway.

(4) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Executive shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

(5) Nothing in paragraphs (1) to (4) shall have effect in relation to street works as respects which the provisions of Part III of the 1991 Act apply.

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

(7) For the purposes of a defence under paragraph (6), the court shall in particular have regard to the following matters—

- (a) the character of the highway, including its use for a railway or 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 Executive 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;

- (e) where the Executive 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 to prove that the Executive had arranged for a competent person to carry out or supervise the maintenance of the part of the highway to which the action relates unless it is also proved that the Executive had given him proper instructions with regard to the maintenance of the street and that he had carried out those instructions.

### **Construction and alteration of bridges**

**16.** Any bridge to be constructed or altered under this Order for carrying a highway over any authorised tramway or any authorised tramway over a highway shall be constructed or altered in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

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

**17.** If the Executive permanently ceases to operate any of the authorised street tramways (“the discontinued tramway”), it shall as soon as reasonably practicable and unless otherwise agreed with the street authority—

- (a) remove from any street in which the discontinued tramway is laid the rails and any other works, equipment and apparatus which have become redundant; and
- (b) restore, to the reasonable satisfaction of the street authority, the portion of the street along which the discontinued tramway was laid regard being had to the condition of the street before the tramway was laid.

### **Agreements with street authorities**

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

- (a) the construction of any new street (including any structure carrying the street over or under any authorised tramway) under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge carrying a highway over any authorised tramway or carrying any authorised tramway over a highway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the execution in the street of any of the works referred to in article 11.

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

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