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STATUTORY INSTRUMENTS

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**2005 No. 1794**

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

**PART 4**

**OPERATION OF TRAMWAY SYSTEM**

**Power to operate and use tramway system**

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

(2) Subject to paragraph (4) and to section 54 of the 1989 Act (as applied by article 5), the Executive shall, for the purpose of operating the authorised tramway, have the exclusive right—

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

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

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

**Maintenance of approved works, etc.**

**38.**—(1) Where, pursuant to regulations<sup>(1)</sup> made under section 41 of the 1992 Act (approval of works, plant and equipment), approval has been obtained from the Secretary of State with respect to any works, plant or equipment (including vehicles) forming part of the authorised tramway, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the authorised tramway.

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

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

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

### **Power to charge fares**

**39.** The Executive may demand, take and recover or waive such charges for carrying passengers or goods on tramcars 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**

**40.—(1)** The Executive may, for the purposes of, or in connection with the operation of, the authorised tramway, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State on or near any street along which tramcars using the authorised tramway are run.

(2) The Executive—

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

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

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on or near any street along which tramcars using the authorised tramway are run, shall consult with the Executive as to the placing of any traffic sign which would affect the operation of the authorised tramway.

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

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

### **Tree Preservation Orders**

**41.** The following, namely—

- (a) an order under section 198(1) of the 1990 Act (tree preservation orders); and
- (b) section 211(1) of that Act (which prohibits the doing in a conservation area of any act which might be prohibited by a tree preservation order),

shall not apply to any exercise of the powers in section 46 (power to lop trees over-hanging railway) of the 1989 Act (including that section as applied by this Order).

### **Obstruction of construction of authorised works**

**42.** Any person who, without reasonable excuse, obstructs another person from constructing any of the authorised tramway or any other authorised works under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **Traffic regulation**

**43.**—(1) Subject to the provisions of this article, the Executive or the Council 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 tramway for use—

- (a) prohibit or restrict in the manner specified in any of the tables in Part 1 of Schedule 6 to this Order the waiting, loading and unloading of vehicles on any road in the City specified in column (1) of those tables and as described in relation to the road in column (2) of those tables;
- (b) make provision in the manner specified in any of the tables in Part 2 of Schedule 6 to this Order as to the permitted direction of movement of vehicular traffic on any road in the City specified in column (1) of those tables and as described in relation to the road in column (2) of those tables;
- (c) prohibit in the manner specified in any of the tables in Part 3 of Schedule 6 to this Order vehicles remaining stationary on any road in the City specified in column (1) of those tables and as described in relation to the road in column (2) of those tables;
- (d) prohibit in the manner specified in any of the tables in Part 4 of Schedule 6 to this Order vehicular access on any road in the City specified in column (1) of those tables and as described in relation to the road in column (2) of those tables;
- (e) revoke in whole or in part any traffic regulation order in so far as the revocation is consequential on any prohibition, restriction or other provision made under this paragraph.

(2) The Executive or the Council shall not exercise the powers of this article unless it has given not less than 12 weeks' notice in writing of its intention so to do to the chief officer of police in whose area the road is situated; and the Executive shall not exercise the powers of this article unless it has in addition obtained the prior consent of the Council.

(3) The Council shall not exercise the powers of this article unless it has consulted the Executive.

(4) Any prohibition, restriction or other provision made by the Executive or the Council under this article shall have 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 to which the prohibition, restriction or other provision is subject which are in addition to any exceptions provided for in Schedule 6 to this Order.

(5) Any prohibition, restriction or other provision made under this article may be varied or revoked from time to time by subsequent exercises of the powers of this article by the Executive or the Council (whether or not prior to the expiry of the period of 12 months referred to in paragraph (1)), but the Executive shall not vary or revoke any provision previously made by the Council under this article without the consent of the Council, and the Council shall not vary or revoke any provision previously made by the Executive under this article without the consent of the Executive.

(6) Any prohibition, restriction or other provision made under this article may also be varied or revoked from time to time by the Council by a traffic regulation order under the 1984 Act, but the Council shall not by such an order vary or revoke any provision previously made by the Executive under this article without the consent of the Executive.

(7) Any consent required under paragraph (2), (5) or (6) shall not be unreasonably withheld.

(8) In this article “the Council” means Birmingham City Council.