
STATUTORY INSTRUMENTS

1999 No. 1306

The Wirral Tramway Order 1999

PART I
PRELIMINARY

Citation and commencement

1. This Order may be cited as the Wirral Tramway Order 1999 and shall come into force on 30th April 1999.

Interpretation

- 2.—(1) In this Order, unless the context otherwise requires—
- “the Act of 1961” means the Land Compensation Act 1961(1);
 - “the Act of 1984” means the Road Traffic Regulation Act 1984(2);
 - “the Application Rules” means the Transport and Works (Applications and Objections Procedure) Rules 1992;
 - “authorised” means authorised by this Order;
 - “authorised tramroad” and “authorised tramway” mean the tramroads and tramways authorised by this Order;
 - “authorised works” means the scheduled works and any other works authorised by this Order;
 - “the borough” means the Metropolitan Borough of Wirral;
 - “carriageway” has the same meaning as in the Highways Act 1980(3);
 - “the Council” means the Council of the borough;
 - “the deposited plan” means the plan described in rule 7(1)(a) and rule 7(3) of the Applications Rules prepared in connection with the application for this Order and certified by the Secretary of State as “the deposited plan” for the purposes of the Order and references to land shown on that plan are references to the land so shown in pursuance of that rule;
 - “highway” and “highway authority” have the same meaning as in the Highways Act 1980;
 - “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;
 - “reserved track tramway” means any section of a street tramway laid along part of a street which vehicles other than tramcars are deterred or prevented from using;
 - “the scheduled works” means the works specified in Schedule 1 to this Order;

(1) 1961 c. 33.
(2) 1984 c. 27.
(3) 1980 c. 66.

“the sections” means the sections described in rule 7(2) of the Applications Rules prepared in connection with the application for this Order and certified by the Secretary of State as “the sections” for the purposes of this Order;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part III of the New Roads and Street Works Act 1991⁽⁴⁾;

“street tramway” means any part of a tramway which is laid along a street—

- (a) whether or not the section of the street in which its rails are laid may be used by other traffic, and
- (b) whether the uppermost surface of the rails is level with, or raised above, the surrounding surfaces of the street;

“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 undertaker” means the Council;

“vehicle” includes mobile traction unit.

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

Application of enactments relating to railways

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845⁽⁵⁾ shall be incorporated in this Order but shall apply only in relation to the authorised tramroads—

section 24 (penalty for obstructing construction of railway);

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level).

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

“the company” means the undertaker;

“the railway” means the authorised tramroads and, except where the context otherwise requires, any authorised works ancillary to the authorised tramroads;

“the special Act” means this Order.

(3) The provisions of the Regulation of Railways Act 1840 to 1893, except the provisions of the Regulation of Railways Act 1871⁽⁶⁾, shall not apply in relation to the authorised tramway.

⁽⁴⁾ 1991 c. 22.

⁽⁵⁾ 1845 c. 20.

⁽⁶⁾ 1871 c. 78.

(4) The provisions of the Highway (Railway Crossings) Act 1839⁽⁷⁾ shall not apply in relation to the authorised tramway.

(5) Nothing in this article shall be taken as affecting the application to the authorised tramroads of sections 32 to 34 of the Offences Against the Person Act 1861⁽⁸⁾.

PART II

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

4.—(1) The undertaker may construct and maintain the combined street tramways and tramroads described in Schedule 1 to this Order.

(2) Subject to article 5 below, the scheduled works shall be constructed in the lines or situations shown on the deposited plan and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5) below, the undertaker may within the limits of deviation carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of the construction of the scheduled works, namely—

- (a) works required for, or in connection with, the control of traffic on the authorised tramway;
- (b) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (c) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (d) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (e) works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (5) below, the undertaker may within the limits of deviation carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of the construction of the scheduled works.

(5) Paragraphs (3) and (4) above shall not authorise the carrying out or maintenance of works to alter the course of, or otherwise interfere with, navigable rivers or watercourses.

Power to deviate

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

- (a) deviate laterally from the lines or situations shown on the deposited plan within the limits of deviation for that work shown on that plan; and
- (b) deviate vertically from the levels shown on the sections to any extent not exceeding 0.5 metres upwards and to any extent downwards.

(2) The undertaker may in constructing or maintaining any of the authorised tramroads or authorised street tramways lay down—

- (a) double lines of rails in lieu of single lines,
- (b) single lines of rails in lieu of double lines,

⁽⁷⁾ 1839 c. 45.
⁽⁸⁾ 1861 c. 100.

- (c) interlacing lines of rails in lieu of double or single lines, or
- (d) double or single lines of rails in lieu of interlacing lines.

(3) The power in paragraph (2) above shall not be exercised in the case of any authorised street tramway without the consent of the street authority, but such consent shall not be unreasonably withheld.

Streets

Power to keep apparatus in streets

6.—(1) The undertaker may, for the purposes of or in connection with the construction, maintenance and use of any authorised street tramway, place and maintain in any street along which the tramway is laid any work, equipment or apparatus including, without prejudice to the generality of the foregoing, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part III of the New Roads and Street Works Act 1991;
- (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989⁽⁹⁾; and
- (c) 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

7. The undertaker may, for the purpose of exercising the powers conferred by article 6 above and the other provisions of this Order, enter upon any street along which any authorised street tramways are laid 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.

Temporary stopping up of streets

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

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

(2) The undertaker 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 undertaker shall not exercise the powers of this article in relation to any street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(4) The provisions of the New Roads and Street Works Act 1991 mentioned in paragraph (5) below and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the undertaker under the powers conferred by this article where no street works are

(9) 1989 c. 29.

executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the undertaker.

(5) The provisions of the New Roads and Street Works Act 1991 referred to in paragraph (4) above are—

- section 54 (advance notice of certain works);
 - section 55 (notice of starting date of works);
 - section 59 (general duty of street authority to co-ordinate works);
 - section 60 (general duty of undertakers to co-operate);
 - section 69 (works likely to affect other apparatus in the street);
 - section 76 (liability for cost of temporary traffic regulation);
 - 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.

Restoration of streets if tramway discontinued

9. If the undertaker 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 the 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 to as good a condition as that in which it was before the tramway was laid.

Agreements with street authorities

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

- (a) the construction of any new street (including any structure carrying the street over or under a tramroad) under the powers conferred by this Order;
 - (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a tramroad;
 - (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 works referred to in article 7 above.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1) above—
- (a) make provision 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

11.—(1) The undertaker may construct the authorised tramways so as to carry them on the level across the highways specified in Schedule 2 to this Order.

(2) The undertaker may provide, maintain and operate at or near any new level crossing such barriers or other protective equipment as the Secretary of State may in writing approve.

(3) The undertaker may in the exercise of the powers of this article alter the level of any highway specified in Schedule 2 to this Order.

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

(5) In this article—

“barrier” includes gate;

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

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

Supplemental

Attachment of equipment to buildings for purposes of tramway

12.—(1) Subject to the following provisions of this article, the undertaker may affix to any building any brackets, cables, wires, insulators and other apparatus required in connection with the authorised tramway.

(2) The undertaker shall not under this article affix any apparatus to a building without the consent of the relevant owner of the building; and such consent may be given subject to reasonable conditions (including, where appropriate, the payment of rent) but shall not be unreasonably withheld.

(3) Where—

(a) the undertaker serves on the relevant owner of a building a notice requesting the owners’s consent to the affixing of specified apparatus to the building; and

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

the consent shall be deemed to have been withheld.

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

(a) any owner for the time being of the building may serve on the undertaker not less than 28 days notice requiring the undertaker at its own expense temporarily to remove the apparatus during any reconstruction or repair of the building if such removal is reasonably necessary for that purpose; and

(b) the undertaker shall have the right, as against any person having an interest in the building, to maintain the apparatus.

(5) The undertaker shall pay compensation to the owners and occupiers of the building for any loss or damage sustained by them by reason of the exercise of the powers conferred by paragraphs (1) and (4)(b) above; and any dispute as to a person’s entitlement to compensation, or as to the amount of the compensation, shall be determined under Part I of the Act of 1961.

(6) In this article—

“building” includes any structure and a bridge or aqueduct over the street; and

“relevant owner”—

(a) in relation to a building occupied under a lease or tenancy having an unexpired term exceeding 5 years, means the occupier of the building; or

- (b) in relation to any other building, means the person for the time being receiving the rack rent of the building whether on his own account or as agent or trustee for any other person, or who would so receive it if the building were let at a rack rent.

Mode of construction, maintenance and operation of tramway

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

(2) The authorised tramway shall be constructed on a nominal gauge of 1,435 millimeters.

(3) The authorised street tramways (other than any reserved track tramways) shall be so constructed and maintained as to ensure that the uppermost surface of the rails is level with the surrounding surfaces of the street in which they are laid.

PART III

TEMPORARY POSSESSION OF LAND

Temporary use of land for construction of works

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

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 3 to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule;
- (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 28 days before entering upon and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 3 to this Order.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

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

(6) Any dispute as to a person's entitlement to compensation under paragraph (5) above, or as to the amount of the compensation shall be determined under Part I of the Act of 1961.

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the Compulsory Purchase Act 1965(10) 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) above.

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

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

Temporary use of land for maintenance of works

15.—(1) At any time during the maintenance period relating to any of the scheduled works, the undertaker may—

- (a) enter upon and take temporary possession of any land within 10 metres from that work if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it;
- (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) above shall not authorise the undertaker to take temporary possession of—

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

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

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

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

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

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

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the Compulsory Purchase Act 1965 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) above.

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

(10) In this article—

- (a) “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 use;
- (b) “building” includes structure or any other erection; and
- (c) any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

PART IV

OPERATION OF TRAMWAY SYSTEM

Power to operate and use tramway system

16.—(1) The undertaker 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) below and to article 28 below, the undertaker shall, for the purpose of operating the 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 undertaker or other reasonable excuse, uses the apparatus mentioned in paragraph (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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

Maintenance of approved works etc.

17.—(1) Where pursuant to regulations made under section 41 of the 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) above are contravened, the undertaker 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 Secretary of State or the Director of Public Prosecutions.

Power to charge fares

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

Removal of obstructions

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

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

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

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

(3) For the purposes of this article the owner of a vehicle shall be taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of a vehicle at any time, it shall be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994⁽¹¹⁾

Traffic control

20.—(1) The undertaker may, for the purposes of, or in connection with the operation of, the authorised street tramways, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the Act of 1984 or of a character authorised by the Secretary of State on or near any street along which the authorised street tramways are laid.

(2) The undertaker shall consult the traffic authority as to the placing of signs.

(3) Any power conferred by section 65 of the Act of 1984 to give directions to a traffic authority or local traffic authority as to traffic signs shall include a power to give directions to the undertaker as to traffic signs under this article; and accordingly, the powers conferred by paragraph (1) above 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 Act of 1984 to place and maintain, or cause to be placed and maintained, traffic signs on or near any street along which the authorised street tramways are laid shall consult with the undertaker as to the placing of any traffic sign which would affect the operation of the authorised street tramways.

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

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

Power to lop trees overhanging tramway

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

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

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

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

(11) 1994 c. 22.

Trespass on tramroads

22.—(1) Any person who—

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

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

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

(3) This article relates to the authorised tramroads and to the tramroads authorised by the Wirral Tramway Light Railway Order 1994(12).

Power to make byelaws

23.—(1) The undertaker may make byelaws regulating the use and operation of, and travel on, the authorised tramway, the maintenance of order on the complete tramway and on tramway premises or other facilities provided in connection with the complete tramway and the conduct of all persons including employees of the undertaker while on tramway premises.

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

- (a) with respect to tickets issued for travel on the complete tramway, the payment of fares and charges and the evasion of payment of fares and charges;
- (b) with respect to interference with, or obstruction of, the operation of the complete tramway or other facilities provided in connection with the complete tramway;
- (c) with respect to the prevention of nuisances on tramway premises;
- (d) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within tramway premises;
- (e) for the safe custody and re-delivery or disposal of any property accidentally left on tramway premises and for fixing the charges made in respect of any such property; and
- (f) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the complete tramway or on tramway premises.

(3) In this article, “the complete tramway” means the authorised tramway and the tramway authorised by the Wirral Tramway Light Railway Order 1994, and references to “tramway premises” are references to premises of the undertaker used for or in connection with the operation of the complete tramway but do not include references to the inside of a tramcar or premises within the boundary of a street.

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

(5) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (4) above, if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public, or hindrance to the undertaker in the operation of

the tramway, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.

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

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

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

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

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

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

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

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

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

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

Power to contract for police services

24.—(1) Agreements may be made—

- (a) between the undertaker and the chief officer of police of any police force and the police authority; or
- (b) between the undertaker and the British Railways Board,

for making available to the undertaker for the purposes of the operation of its tramway undertaking the services of members of the police force or, as the case may be, members of the British Transport Police Force.

(2) Any such agreement may be made on such terms as to payment or otherwise, and subject to such conditions, as may be specified in the agreement.

(3) Where such an agreement has been made between the undertaker and the British Railways Board, members of the British Transport Police Force may act, in accordance with the terms of the agreement, as constables in, on or in the vicinity of any tramway premises or other facilities used in connection with the authorised tramway notwithstanding the provisions of section 53(1) of the British Transport Commission Act 1949⁽¹³⁾ (which restricts them to acting in, on or in the vicinity of premises belonging to or leased to or worked by the British Railways Board etc.).

(4) In this article—

- (a) “chief officer of police”, “police authority” and “police force” have the same meaning as in the Police Act 1964⁽¹⁴⁾;
- (b) the British Transport Police Force means the force organised under the scheme set out in the Schedule to the British Transport Police Scheme 1963 (Approval) Order 1964⁽¹⁵⁾ made under section 69 of the Transport Act 1962⁽¹⁶⁾; and
- (c) the reference to “tramway premises” is a reference to premises of the undertaker used for or in connection with the operation of the authorised tramway and includes a reference to the inside of a tramcar.

PART V

PROTECTIVE PROVISIONS

For the protection of British Telecommunications plc

25. For the protection of BT the following provisions shall, unless otherwise agreed in writing between the undertaker and BT, apply and have effect:—

(1) In this article—

- “BT” means British Telecommunications plc;
- “operator” and “telecommunication apparatus” have the same meanings as in Schedule 4 to the Telecommunications Act 1984⁽¹⁷⁾.

(2) The temporary stopping up or diversion of any street under article 8 above shall not affect any right of BT under paragraph 9 of the Telecommunications Code, contained in Schedule 2 to the Telecommunications Act 1984, in respect of any telecommunication apparatus which at the time of the temporary stopping up or diversion is in that street.

(3) If BT suffers damage in consequence of the construction, use or failure of the works or any subsidence resulting from the works, the undertaker shall pay the cost reasonably incurred by BT in making good such damage, and shall indemnify the telecommunications operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by BT by reason or in consequence of any such damage, but—

- (a) nothing in this paragraph shall impose any liability on the undertaker with respect to any damage to the extent that such damage is attributable to any act or omission of BT, its officers, servants, contractors or other agents; and
- (b) BT shall give to the undertaker reasonable notice of any claim or demand as aforesaid and shall make no settlement or compromise thereof without the consent of the undertaker, such consent not to be unreasonably withheld or delayed.

⁽¹³⁾ 1949 c. xxix.

⁽¹⁴⁾ 1964 c. 48.

⁽¹⁵⁾ S.I. 1964/1456.

⁽¹⁶⁾ 1962 c. 46.

⁽¹⁷⁾ 1984 c. 12.

(4) The undertaker shall not use electrical power in such a manner as to cause or be likely to cause any interference with telecommunication apparatus or with telecommunication by means of such apparatus, and the undertaker shall indemnify BT against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by BT by reason or in consequence of such interference, but—

- (a) nothing in this paragraph shall impose any liability on the undertaker with respect to any interference to the extent that such interference is attributable to any act or omission of BT, its officers, servants, contractors or other agents; and
- (b) BT shall give to the undertaker reasonable notice of any claim or demand as aforesaid and shall make no settlement or compromise thereof without the consent of the undertaker, such consent not to be unreasonably withheld or delayed.

(5) Nothing in this Order shall affect any right of BT under Schedule 2 to the Telecommunications Act 1984.

For the protection of public electricity suppliers

26.—(1) In this article “apparatus” means any electric line or electrical plant as respectively defined by section 64 of the Electricity Act 1989(18).

(2) Nothing in this Order shall prejudice or affect the rights of any public electricity supplier, within the meaning of Part I of the Electricity Act 1989, in any apparatus belonging to them, or for the maintenance of which they are responsible, or any structure for the lodging therein of apparatus, being any apparatus or structure situate in, over or under lands in or upon or near to which the authorised tramway or any part thereof may be constructed.

(3) Before commencing any works authorised by this Order under or over or which will or may affect any apparatus belong to a public electricity supplier or for the maintenance of which a public electricity supplier is responsible the undertaker shall give to the public electricity supplier not less than 28 days notice in writing accompanied by a plan and section of the proposed work and such work shall be executed only in accordance with the plan and section submitted, and in accordance with such reasonable requirements (including those already agreed between the Council and the public electricity supplier) as may be made by the public electricity supplier for the protection of the apparatus, or for securing access thereto.

(4) If by reason or in consequence of the execution or user of any of the works authorised by this Order any damage to any apparatus or any interruption in supply of electricity by a public electricity supplier shall be caused, the undertaker shall bear and pay the cost reasonably incurred by the public electricity supplier in making good such damages or in restoring the supply of electricity and shall make reasonable compensation to the public electricity supplier for any loss sustained by it and indemnify the public electricity supplier from and against all claims in respect of any such damage or interruption.

For the protection of public gas transporters

27.—(1) Nothing in this Order shall prejudice or affect the statutory or other rights of any public gas transporter in or relating to any pipe, main or apparatus belonging to them or for the maintenance of which they are responsible or any structure for the lodging therein of any pipe, main or apparatus being any pipe, main or apparatus or structure situate under, over or upon lands in or upon or near to which the authorised tramway or any part thereof is or may be constructed.

(2) Before commencing any works authorised by this Order under or over or which will or may affect any pipe, main or apparatus or structure belonging to a public gas transporter or for the maintenance of which a public gas transporter is responsible the undertaker shall give to the

(18) 1989 c. 29.

public gas transporter not less than 28 days' notice in writing accompanied by a plan and section of the proposed work and such work shall be executed only in accordance with the plan and section submitted and in accordance with such reasonable requirements as may be made by the public gas transporter for the protection of the pipe, main or apparatus or structure or for securing access thereto.

(3) The undertaker shall provide reasonable facilities at any time for the public gas transporter to monitor, inspect and supervise the execution of the authorised works and shall permit the public gas transporter to gain access to any of its pipes, mains or apparatus or structures at all times.

(4) Where a street is to be temporarily stopped up, altered or diverted pursuant to article 8 above—

- (a) the undertaker shall give notice in writing to the public gas transporters such notice being not less than 28 days;
- (b) the temporary stopping up, alteration or diversion of any street pursuant to article 8 above shall not affect any right of access enjoyed by a public gas transporter to use, inspect, maintain, adjust, repair or alter any pipe, main or apparatus or structure which at the time of the temporary stopping up, alteration or diversion is in the street.

(5) Where in connection with the authorised works, works are reasonably required for the relocation by a public gas transporter of such of its pipes, mains or apparatus or structures (whether or not such works are necessary because of the temporary stopping up of any street pursuant to article 8 above)—

- (a) the undertaker shall pay to the public gas transporter an amount equal to the cost reasonably incurred by the public gas transporter in or in connection with—
 - (a) the execution of the said relocation works;
 - (b) the doing of any other work or thing rendered necessary by the relocation works;
- (b) in the event that the public gas transporter in removing or diverting any pipe, main or apparatus or structure reasonably requires to carry out works on land held or owned or intended for use by the undertaker for the purpose of the authorised works, the provisions of the New Roads and Street Works Act 1991 with respect to the public gas transporter's rights and duties with respect to its apparatus in a street shall apply notwithstanding that the said land is not part of a street.

(6) If by reason or in consequence of the execution or use of any of the works authorised by this Order any damage is caused to any pipe, main or apparatus or structure of a public gas transporter or to any property of a public gas transporter or there is interruption in the conveyance of gas to any property by the public gas transporter the undertaker shall bear and pay the costs reasonably incurred by the public gas transporter in making good such damage or in restoring such conveyance of gas and the undertaker shall make reasonable compensation to the public gas transporter for any loss sustained by it and indemnify the public gas transporter from and against all claims, demands, costs, proceedings, damages and expenses which may be made or recovered from or incurred by the public gas transporter by reason of or in consequence of any such damage or interruption or the exercise by the undertaker of the powers of this Order.

(7) In this article, “public gas transporter” has the meaning given by section 7 of the Gas Act 1986(19).

PART VI

MISCELLANEOUS AND GENERAL

Power to lease or charge tramway system

28.—(1) The undertaker may, with the consent of the Secretary of State—

- (a) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee the right to operate the authorised tramway (or any part of it) and such related statutory rights as may be so agreed; or
- (b) grant to another person (“the chargee”) a charge on the right to operate the authorised tramway (or any part of it) and such related statutory rights as may be agreed between the undertaker and the chargee.

(2) The terms of any agreement made by virtue of paragraph (1) above shall be subject to the approval of the Secretary of State.

(3) Where an agreement is made by virtue of paragraph (1) above references in this Order to the undertaker shall, if and to the extent that the agreement so provides, have effect as references to the lessee or, as the case may be, chargee.

Certification of plans etc.

29. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the sections and the deposited plan to the Secretary of State for certification that they are, respectively, true copies of the sections and plan referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of its contents.

Signed by authority of the Secretary of State for the Environment, Transport and the Regions.

A.S.D. Whybrow
Head of Charging and Local Transport Division,
Department of the Environment, Transport and
the Regions

9th April 1999