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STATUTORY INSTRUMENTS

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**2005 No. 1918**

**The Greater Manchester (Leigh Busway) Order 2005**

**PART 2**

WORKS PROVISIONS

*Principal powers*

**Power to construct and maintain works**

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

(2) Subject to article 5, the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (5) the undertaker may 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) stops, platforms and stopping places;
- (b) works required for the strengthening, improvement, repair or reconstruction of any street;
- (c) works required for, or in connection with, the control of any vehicular and pedestrian traffic on or in the vicinity of the authorised busway;
- (d) parking and Park and Ride facilities;
- (e) works for the strengthening, alteration or demolition of any building or structure;
- (f) works to alter the position of any street furniture or apparatus, including mains, sewers, drains and cables;
- (g) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (h) landscaping and works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
- (i) replacement facilities and works for the benefit or protection of premises affected by the authorised works.

(4) Subject to paragraph (5), the undertaker may 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) shall only authorise the carrying out or maintenance of works—

- (a) within the limits of deviation for the scheduled works shown on the works plans; and
- (b) on land specified in columns (1) and (2) of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Schedule.

(6) Paragraph 23 of Schedule 2 to the Telecommunications Act 1984<sup>(1)</sup> (the telecommunications code) shall apply for the purposes of any works authorised by this Order save in so far as such purposes are regulated by the 1991 Act or any regulations made under that Act.

### **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 works plans within the limits of deviation for 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.

(2) The undertaker may in constructing and maintaining any part of the authorised busway provide within the limits of deviation such gaps in the mode of guidance adopted and such number of ways, cross-overs, lay-bys, bus parking areas and sidings as may be necessary or expedient.

### *Streets*

### **Power to alter layout of streets**

6.—(1) The undertaker may alter the layout of any street specified in columns (1) and (2) of Schedule 3 to this Order in the manner specified in relation to that street in column (3) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may for the purpose of constructing, maintaining or using any authorised works alter the layout of any street within the limits of deviation or of land to be acquired; and, without prejudice to the generality of the foregoing, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycletrack or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycletrack or verge;
- (c) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for vehicles or by carrying out other works for that purpose;
- (d) replace or alter the surface or surface treatment of the street;
- (e) carry out works for the provision or alteration of parking places;
- (f) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999<sup>(2)</sup> 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 vehicles permitted by the undertaker from passing along the authorised busway; and
- (h) make and maintain crossovers, sidings or passing places.

(3) The powers in paragraph (2) shall not be exercised in relation to a highway without the consent of the highway authority, but such consent shall not be unreasonably withheld.

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(1) 1984 c. 12.  
 (2) S.I.1999/1026.

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

7.—(1) The undertaker may, for the purposes of or in connection with the construction, maintenance and use of the authorised busway, place and maintain in any street having a junction with or being in the vicinity of the authorised busway any work, equipment or apparatus including, without prejudice to the generality of the foregoing, foundations, guidance equipment or structures, 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<sup>(3)</sup>; 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**

8. The undertaker may, for the purpose of exercising the powers conferred by article 7 and the other provisions of this Order, enter upon any 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.

### **Construction of new and stopping up of existing paths or streets**

9.—(1) The undertaker may in connection with the authorised works construct the new paths or streets specified in column (2) of Part 1 and column (4) of Part 2 of Schedule 4 by reference to the letters and numbers shown on the rights of way maps and as illustrated on the technical development plans.

(2) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the existing or informal paths or streets specified in columns (1) and (2) of Part 2 and Part 3 of Schedule 4 to this Order to the extent specified, by reference to the letters and numbers shown on the rights of way maps, in column (3) of Parts 2 and 3 of that Schedule as illustrated on the technical development plans.

(3) No path or street specified in columns (1) and (2) of Part 2 of Schedule 4 (being a path or street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article until the new path or street to be substituted for it, and which is specified in relation to it in column (3) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use.

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

(5) This article is subject to paragraph 2 of Schedule 10 to this Order.

### **Temporary stopping-up of paths or streets**

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

- (a) divert the traffic from the path or street; and

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(3) 1989 c. 29.

(b) subject to paragraph (3), prevent all persons from passing along the path or street.

(2) Without prejudice to the generality of paragraph (1), the undertaker may use any path or street stopped up under the powers of this article as a temporary working site.

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

(4) Without prejudice to the generality of paragraph (1), and subject to paragraph (5), the undertaker may exercise the powers of this article in relation to the existing or informal paths or streets specified in columns (1) and (2) of Schedule 4 and in columns (1) and (2) of Schedule 5 to this Order to the extent specified, by reference to the letters and numbers shown on the rights of way maps, in column (3) of those Schedules.

(5) The undertaker shall not exercise the powers of this article—

(a) in relation to any path or street specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) in relation to any other path or street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(6) The temporary stopping up, alteration or diversion of any path or street authorised by this Order shall not affect any right of a public communications provider in respect of any apparatus which at the time of the stopping up or diversion is in the highway.

#### **Access to works**

**11.** The undertaker may, for the purposes of the scheduled works, form and lay out means of access or improve existing means of access in such locations within the limits of deviation as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

#### **Construction and maintenance of new or altered paths or streets**

**12.—**(1) Any path or street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed between the undertaker and the highway authority, be maintained by and at the expense of the undertaker 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 path or street is altered or diverted under this Order, the altered or diverted part of the path or street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under the authorised busway.

#### **Construction of bridges and tunnels**

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

#### **Agreements with street authorities**

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

- (a) the construction of any new street (including any structure carrying the street over or under the authorised busway) under the powers conferred by this Order;
  - (b) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised busway;
  - (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 8.
- (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.

### **Level crossings**

**15.**—(1) The undertaker may construct the authorised busway so as to enable vehicles upon it to cross on the level any highway crossing the line of the authorised busway including the highways specified in Schedule 6 to this Order.

(2) The powers in paragraph (1) shall not be exercised in relation to any highway which is not specified in Schedule 6 to the Order without the consent of the highway authority, but such consent shall not be unreasonably withheld.

(3) The undertaker may provide, maintain and operate at or near any level crossing such barriers or other protective equipment as the Health and Safety Executive may in writing approve.

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

(5) Without prejudice to the generality of article 6, the undertaker may in the exercise of the powers of this article alter the level of any highway specified in Schedule 6 to this Order.

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

(7) In this article—

“barrier” includes gate;

“level crossing” means the place at which the authorised busway 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 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

### *Supplemental*

### **Discharge of water**

**16.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction 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 limits of deviation shown on the works plans or in any street along which the authorised busway is authorised to cross make openings into, and connections with, the watercourse, sewer or drain.

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

(3) The undertaker shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) The undertaker shall 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.

(5) The undertaker shall 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 or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991<sup>(4)</sup>.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

### **Planning permission: supplementary powers**

17.—(1) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969<sup>(5)</sup> (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975<sup>(6)</sup> as incorporated in any tree preservation order, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999<sup>(7)</sup> as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not be treated as an outline planning permission.

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

### **Power to survey and investigate land**

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

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(4) 1991 c. 57.  
(5) S.I. 1969.17.  
(6) S.I. 1975/148.  
(7) S.I. 1999/1892.

- (a) survey or investigate any land within the limits of deviation and of land to be acquired shown on the works plans;
  - (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
  - (c) without prejudice to the generality of sub-paragraph (a), carry out archaeological investigations on any such land;
  - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
  - (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
  - (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.
- (5) The undertaker shall make 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 I of the 1961 Act.
- (6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979<sup>(8)</sup>.

### **Obstruction of construction of busway**

**19.** Any person who, without reasonable excuse, obstructs another person from constructing any of the 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.

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<sup>(8)</sup> 1979 c. 46.