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STATUTORY INSTRUMENTS

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**2005 No. 927**

**The Midland Metro (Wednesbury to Brierley Hill  
and Miscellaneous Amendments) Order 2005**

**PART 2**

**WORKS PROVISIONS**

*Supplemental powers*

**Discharge of water**

**22.**—(1) The Executive 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 on any land within the Order limits, lay down, take up and alter pipes and make openings into, and connections with, the watercourse, sewer or drain.

(2) The Executive 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 Executive 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 Executive shall not, in 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 Executive 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>(1)</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 passages through which water flows except a public sewer or drain;
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

### **Attachment of equipment to buildings for purposes of tramway**

**23.**—(1) Subject to the following provisions of this article, the Executive may affix to any building listed in Part 2 of the book of reference any brackets, cables, wires, insulators and other apparatus required in connection with the authorised tramway.

(2) The Executive 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 Executive serves on the relevant owner of a building a notice requesting the owner’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 give it subject to conditions or refuse it,

the consent shall be deemed to have been withheld.

(4) Where, in the opinion of the Executive, a consent required under this article for the affixing of specified apparatus is unreasonably withheld or given subject to unreasonable conditions, it may apply to the magistrates' court, who may either allow the apparatus to be affixed subject to such conditions, if any, as it thinks fit or may disallow the application.

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

- (a) any owner for the time being of the building may serve on the Executive not less than 28 days' notice requiring the Executive at its own expense temporarily to remove the apparatus during any demolition, reconstruction or repair of the building if such removal is reasonably necessary for that purpose; and
- (b) the Executive shall have the right as against any person having an interest in the building to maintain the apparatus.

(6) The Executive 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 (5)(b); and any dispute as to a person’s entitlement to compensation, or as to the amount of compensation, shall be determined under Part I of the 1961 Act.

(7) Nothing in this article shall prejudice the power of the Executive to acquire a new right under article 29 to attach apparatus to buildings.

(8) In this article—

“building” includes any structure (including a bridge); 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.

### **Safeguarding works to buildings**

**24.**—(1) Subject to the following provisions of this article the Executive may at its own expense and from time to time carry out such safeguarding works to any building which is within the Order limits as the Executive 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; or
- (b) after the completion of the construction of that part of the authorised works, 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 Executive may enter and survey any building falling within paragraph (1) and any land belonging to it.

(4) For the purpose of carrying out safeguarding works under this article to a building the Executive may (subject to paragraph (5) and (6))—

- (a) enter the building and any land belonging to it; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, 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 belonging to it;
- (c) a right under paragraph (4)(a) to enter a building or land; or
- (d) a right under paragraph (4)(b) to enter land,

the Executive shall, 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), (c) or (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 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 57.

(7) The Executive shall compensate the owners and occupiers of any building or land in relation to which the powers of 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,

the Executive shall compensate the owners and occupiers of the building for any damage sustained by them.

(9) Nothing in this article shall relieve the Executive from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part I of the 1961 Act.

(11) This article does not apply to any of the land specified in columns (1) and (2) of Part 2 of Schedule 2 to this Order.

(12) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection; and
- (b) “safeguarding works”, in relation to a building means—
  - (i) 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; and
  - (ii) 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.

### **Power to construct temporary tramways**

**25.**—(1) The Executive 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 lieu 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), 10 and 11 and of article 44 shall apply in relation to temporary tramways laid under this article as they apply in relation to authorised street tramways.

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

**26.**—(1) The Executive may, in relation to any land within the Order limits, for the purposes of this Order—

- (a) survey or investigate the land;
- (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 the 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 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 Executive—

- (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 for the purpose of exercising any of the powers conferred by paragraph (1).

(4) No trial hole 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 Executive 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.

### **Mode of construction and operation of tramway**

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

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

(3) Where a 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 the making of a payment), the Executive shall take such care as in all the circumstances is reasonable to ensure that the 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 Executive shall 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.

### **Temporary interference with waterways**

**28.**—(1) Without prejudice to the generality of the powers conferred by article 6, the Executive may in connection with the construction of Work No. 1D, 1E, 3B, 12 or 14—

- (a) temporarily interfere with any relevant waterway, by constructing or maintaining temporary works at any point within the Order limits as it considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in any relevant waterway, load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials in connection with the construction of the works; and
- (c) temporarily close any relevant waterway, or a part of it, to navigation.

(2) The power conferred by paragraph (1)(c) shall be exercised in a way which secures—

- (a) that no more of a relevant waterway is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure of a relevant waterway to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use it.

(3) Any person who suffers loss by reason of the interference by virtue of this article with any private right of navigation shall be entitled to compensation to be paid by the Executive to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(4) In this article “relevant waterway” means the Tame Valley Canal, the Walsall Canal, the Birmingham Canal, the Pensnett Canal and the Dudley Canal.