

TRANSPORT AND WORKS ACT 1992

**TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS
PROCEDURE) (ENGLAND AND WALES) RULES 2006**

**THE MIDLAND METRO (BIRMINGHAM CITY CENTRE EXTENSION
LAND ACQUISITION AND VARIATION) ORDER**

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article and schedule in the draft Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006 (S.I. 2006 No.1455).

Application for the Order has been made by West Midlands Passenger Transport Executive (“the Executive”). The Order would confer further powers of compulsory acquisition on the Executive for the purpose of the works authorised by the Midland Metro (Birmingham City Centre Extension, etc.) Order 2005 (S.I. 2005 No. 1794), (“the 2005 Order”) as the original powers of compulsory acquisition under that Order expired on 22 July 2010. The Order would also authorise a variation of the alignment of the tramway authorised by the 2005 Order to reflect amendments to the highway in Paradise Circus, Queensway proposed as part of the Paradise Circus Development (“the Variation”). The Order would also confer compulsory powers on the Executive to acquire a small amount of additional land for the purposes of the Variation and would provide powers (including powers to acquire land compulsorily) to enable the Executive to carry out a minor adjustment to the 2005 scheme outside the Paradise Circus area.

This Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006 No.1954) (“the model clauses”) as adapted in the 2005 Order in order to ensure consistency with that Order.

PART 1

PRELIMINARY

Part 1 contains preliminary provisions

Article 1 (*Citation and commencement*) provides for the citation and the coming into force of the Order.

Article 2 (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order. Definitions additional to those set out in the model clauses have been included in the article to provide clarity, taking into account the specific provisions of the Order. In particular, “the authorised works” are defined as being both the Order works (meaning the section of tramway on the revised alignment and any other works authorised by this Order) and the works authorised by the 2005 Order.

Article 3 (*Application of New Roads and Street Works Act 1991*) provides for the application of various provisions of the New Roads and Street Works Act 1991 (c.22) (“the 1991 Act”) to the temporary stopping up of streets under powers conferred by the Order. Paragraph (1)(b) extends the model clause to provide that vehicle crossings over footways and verges, within the meaning of section 184 of the Highways Act 1980 (c.66), are to be treated as major highway works for the purposes of the Order. This follows the wording of article 3 of the 2005 Order. Paragraphs (2) and (3) also follow the precedent of the article 3 of the 2005 Order. Paragraph (2) makes it explicit that, where works executed under the Order are treated as major highway works for the purposes of Part 3 of the 1991 Act, references in that Act to the highway authority are to be construed as references to the Executive. Paragraph (3) provides that those sections of the 1991 Act referred to in paragraph (4) apply to works carried out under powers conferred by article 11 (*temporary stopping up of streets*) even where such works are not “street works” within the meaning of the 1991 Act. Paragraph (4) applies the identical provisions of the 1991 Act as were applied by the 2005 Act.

Article 4 (*Incorporation of the Railway Clauses Consolidation Act 1845*) incorporates, subject to amendments, certain provisions of the Railways Clauses Consolidation Act 1845 (c.20) relevant to street tramways. The article omits those provisions referred to in the model clauses that are not relevant to this Order.

Article 5 (*Application of the Midland Metro Acts*) applies certain provisions of the Midland Metro Acts 1989 to 1992 to the authorised tramway. Paragraph (3)(a) updates the reference to closure procedures in the Midland Metro Act 1989 (c.xv.) to make reference to section 25 of the Railways Act 2005 (c. 14) (*proposal to discontinue excluded services*).

PART 2

WORKS PROVISIONS

Principal powers

Part 2 of the Order contains provisions relating to the construction and maintenance of works by the Executive.

Article 6 (*Power to construct and maintain works*) authorises the construction and maintenance by the Executive of the street tramway authorised as part of Work No. 2 by the 2005 Order on a revised alignment within Paradise Circus as shown on the works plans and in accordance with the levels shown on the deposited sections. The authorised tramway must be constructed within the limits of deviation described in article 7 (*power to deviate, etc.*). By relating the authorisation of the tramway to the Paradise Circus development (as defined in paragraph (9)), the article makes it clear that these new powers can only be exercised if that development proceeds.

Article 6 also provides for the construction and maintenance of works necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised tramway. These are described in general terms in paragraphs (3), (4) and (5). In an extension to the model clauses, paragraph (3) includes descriptions of categories of works which it is envisaged are likely to be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the authorised tramway. Such variation to the model clauses has precedent in the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010 No. 1721). The carrying out or maintenance of ancillary works outside limits of deviation may only be done on land which is specified in column (1) of Parts 1 or 2 of Schedule 1 (*acquisition of land*) for the purpose specified in relation to that land in column (2) of that Schedule.

In a further extension to the model clauses, paragraph (7) empowers the Executive to remove any works constructed by it pursuant to the Order which have been constructed as temporary works or which it no longer requires. This has precedent in The London Underground (Victoria Station Upgrade) Order 2009 (S.I. 2009 No. 2364).

Paragraph (8) of Article 6 provides for the carrying out of separate works to widen the highway within plots 02 and 03, as shown on the works plan. These works are very minor and will have no significant impacts, but are necessary for visibility.

Article 7 (*Power to deviate, etc.*) permits the Executive, in constructing and maintaining the works, to deviate (within specified limits) from the lines or situations shown on the works plan and deposited section. It also allows the laying of alternative lines of rails for authorised street tramway.

Streets

Article 8 (*Power to alter layout, etc. of streets*) empowers the Executive to realign the kerbline at the junction of Paradise Street and Suffolk Street Queensway and at the junction between Bridge Street and Broad Street between the specified points shown on the works plan. In addition, paragraph (2) permits the Executive, with the consent of the street authority, to alter the layout of any street within the City of Birmingham along which the tramway is laid in the manner specified in that paragraph. In an extension to the model clauses, which has precedent in article 9 to the 2005 Order, it also requires the approval of the street authority to the exercise by the Executive of certain other powers conferred by the Order.

Article 9 (*Power to keep apparatus in streets*) provides that the Executive may place and maintain works, equipment or apparatus in any street in which the authorised tramway is laid, or which has a junction with it, for the purposes of, or in connection with, that tramway.

Article 10 (*Power to execute street works*) provides that, for the purpose of exercising the powers conferred by article 9 (*power to keep apparatus in streets*) and the other provisions of the Order, the Executive may enter upon and carry out works in any street in which the tramway is laid or which has a junction with it.

Article 11 (*Temporary stopping up of streets*) makes provision for the temporary stopping up, alteration or diversion of streets during and for the purposes of the execution of the Order works. These powers are to be exercised with the consent of the street authority.

Article 12 (*Access to works*) provides that the Executive may lay out or improve means of access to the Order works within the Order limits with the consent of the highway authority.

Article 13 (*Restoration of streets if street tramway discontinued*) requires the Executive where the street tramway is permanently discontinued to remove the rails and other works and equipment and to restore the street to the reasonable satisfaction of the street authority.

Article 14 (*Agreements with street authorities*) provides for the Executive and any street authority to enter into agreements regarding the construction of a new street, the stopping up, alteration or diversion of streets or the execution of any street works referred to in article 10.

Supplemental powers

Article 15 (*Discharge of water*) makes provisions for the use of watercourses, drains and sewers for the drainage of water in connection with the construction and maintenance of the Order works. Paragraph (6) has been updated to refer to the environmental permitting regime under the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010 No. 675).

Article 16 (*Safeguarding works to buildings*) authorises the Executive to carry out safeguarding works to buildings within the Order limits and provides for the payment of compensation.

Article 17 (*Power to construct temporary tramways*) provides, subject to the consent of the street authority, for the construction of a temporary tramway in place of the authorised tramway required as a result of any street works.

Article 18 (*Power to survey and investigate land*) authorises the Executive to enter upon land within the Order limits after the service of notice, for the purpose of carrying out surveys and investigations.

Article 19 (*Mode of construction and operation of tramway*) provides for the operational gauge, means of power and related matters concerning the authorised tramway.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Part 3 of the Order contains provisions for the compulsory acquisition of land and rights in land and for the temporary use of land for the purposes of both the authorised tramway and ancillary works and in relation to those works authorised by the 2005 Order. It also provides for the payment of compensation.

Article 20 (*Power to acquire land*) confers on the Executive powers of compulsory acquisition of so much of the land specified in column (1) of Part 1 of Schedule 1 (*acquisition of land*) as may be required for any of the purposes specified in relation to that land in column (2) of that Schedule.

Article 21 (*Application of Part 1 of Compulsory Purchase Act 1965*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965.

Article 22 (*Application of Compulsory Purchase (Vesting Declarations) Act 1981*) provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 and provides for that Act to have effect subject to certain modifications. It gives the Executive the option to acquire land by this method rather than through the notice to treat procedure.

Article 23 (*Powers to acquire new rights*) makes ancillary provision where rights over land are acquired. Paragraph (2) departs from the model clauses in providing that, in the case of the land specified in column (1) of Part 2 of Schedule 1 (*acquisition of rights only*), the Executive's exercise of compulsory powers is limited to the acquisition of such easements and other new rights as may be required for the purpose specified in relation to that land in column (2) of that Part of that Schedule. In relation to such land the possibility of outright acquisition is not required. This provision was included in the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010 No.1721) and, in the context of development consent, in article 18(2) of The Network Rail (Ipswich Chord) Order 2012 (S.I. 2012 No. 2284).

Paragraph (4) is an extension to the model clauses providing that powers under paragraph (2) may not be exercised in respect of the specified plots (shown on the works plan) unless any existing buildings within those plots have been demolished as part of the Paradise Circus development. Again, this makes clear that these powers may only be exercised provided that development proceeds.

Paragraph (6) is based on precedent found in the Network Rail (Ipswich Chord) Order 2012⁽¹⁾. It provides for the acquisition of rights by statutory undertakers (rather than the Executive) in

⁽¹⁾ S.I. 2012 No. 2284

circumstances where the relevant land is required for the diversion or relocation of their apparatus and the Secretary of State gives consent. Such provision is appropriate because the dominant tenement to be benefitted by such rights is the statutory undertaking of the undertaker rather than the Executive's land and it is therefore necessary for the relevant statutory undertaker to acquire the rights.

Article 24 (*Rights under or over streets*) permits the Executive to enter upon and appropriate the subsoil of, or airspace over, streets without the requirement to acquire any part of the street or any easement or right in the street. There is provision for compensation to be paid.

Temporary possession of land

Article 25 (*Temporary use of land for construction of works*) enables the Executive to take temporary possession of land listed in Schedule 3 (*land of which temporary possession may be taken*) and certain other land within the Order limits for use in connection with the construction of the authorised works and makes provision for the payment of compensation. Paragraph (2) extends the notice period in the model clauses from 14 to 28 days in line with the equivalent notice period in article 30 of the 2005 Order.

Article 26 (*Temporary use of land for maintenance of works*) empowers the Executive to take temporary possession of land within the Order limits if such possession is reasonably required for the maintenance of the Order works. In a limitation on the scope of the model clauses, this power is limited to land lying within 20 metres from the Order works. Temporary works may be constructed on the land as reasonably necessary and provision is made for notice and compensation. This power does not apply to any house, garden, occupied building or to land over which only new rights are to be acquired.

Compensation

Article 27 (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition the Upper Tribunal will disregard any interest in land or any enhancement of an interest in land caused by improvements which they are satisfied were created or undertaken with a view to obtaining compensation or increased compensation.

Supplementary

Article 28 (*Acquisition of part of certain properties*) sets out an alternative procedure where the Executive acquires compulsorily part only of certain types of properties subject to the right of the owner to require the whole of the property to be acquired, if part cannot be taken without material detriment to the remainder. This replaces section 8(1) of the Compulsory Purchase Act 1965.

Article 29 (*Extinction or suspension of private rights of way*) provides, in paragraphs (1) and (2) for the extinguishment of private rights of way over land compulsorily acquired and the suspension of private rights of way in respect of land temporarily occupied. Paragraph (3) provides for payment of compensation. Paragraph (5) departs from the model clause to provide that paragraphs (1) and (2) may be overridden by alternative arrangements agreed between the Executive and the person entitled to the private right of way. It does not matter whether any such agreement was made before or after the coming into force of the Order. In a further departure from the model clauses, paragraph (6) empowers the Executive to prevent, by notice, the application of paragraphs (1) and (2) in relation to the extinguishment of any particular rights of way.

Article 30 (*Time limit for exercise of powers of acquisition*) imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land.

PART 4

OPERATION OF TRAMWAY SYSTEM

Article 31 (*Power to operate and use tramway system*) authorises the Executive to operate and use the authorised tramway and other authorised works as a transport system.

Article 32 (*Power to charge fares*) authorises the Executive to charge fares for carrying passengers or goods on the authorised tramway and for related services and facilities.

Article 33 (*Traffic signs*) makes provision for the placing of traffic signs in connection with the operation of the authorised tramway.

Article 34 (*Obstruction of construction of authorised works*) creates an offence of obstructing the construction of the authorised tramway and other authorised works.

PART 5

MISCELLANEOUS AND GENERAL

Article 35 (*Planning permission*) provides for deemed planning permission granted for the works authorised by the Order to be specific planning permission for the purposes of planning legislation. This means that land acquired under the Order is operational land of the Executive for planning purposes.

Article 36 (*Statutory undertakers, etc.*) introduces Schedule 5 to the Order (*provisions relating to statutory undertakers, etc.*) which contains specific safeguards for statutory undertakers with apparatus on land acquired under the Order.

Article 37 (*Existing agreements*) provides that those agreements made in relation to the 2005 Order and listed in Schedule 6 (*existing agreements*) apply equally to the Executive's exercise of powers under this Order.

Article 38 (*Minerals*) is in the same terms as article 46 of the 2005 Order and deals with minerals underlying any land which is compulsorily acquired under the powers of the Order.

Article 39 (*Saving for highway authorities*) provides that nothing in this Order affects the power of a highway authority to carry out works to a highway along which the authorised tramway is constructed or operated.

Article 40 (*Certification of plans, etc.*) provides for the Executive to submit to the Secretary of State for certification the book of reference, the deposited sections and the works and land plans after the making of this Order.

Article 41 (*Service of notices*) makes provisions as to the service of notices or other documents for the purposes of this Order.

Article 42 (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or any other rule of law.

Article 43 (*Disclosure of confidential information*) makes it a criminal offence to disclose confidential information obtained upon entry to premises under articles 16 (*safeguarding works to buildings*) or 18 (*power to survey and investigate land*).

Article 44 (*Withholding of consent*) provides that any consent or approval necessary under the Order is not to be unreasonably withheld and that any dispute relating to whether it is so unreasonably withheld, or as to any conditions attached to it, is to be determined by arbitration.

Article 45 (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.

Article 46 (*Protective Provisions for Network Rail*) introduces Schedule 7 to the Order, which contains provisions for the protection of Network Rail in respect of the works, equivalent to the protective provisions under the 2005 Order which attach to the works authorised under that Order.

Article 47 (***Crown rights***) is not in the model clauses, but makes it explicit that the Order is not intended to authorise the compulsory acquisition of any Crown or government department's rights without written consent. It has recent precedent in a different context in the Lynn and Inner Dowsing Offshore Windfarms (Amendment) Order 2011 (SI 2011 No. 84).