STATUTORY INSTRUMENTS

2016 No. 545

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Midland Metro (Birmingham City Centre Extension, etc.) (Land Acquisition and Variation) Order 2016

Made - - - -	*24th May 2016*
Coming into force - -	*14th June 2016*

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(**1**) for an Order under sections 1 and 5 of the Transport and Works Act 1992(**2**) ("the 1992 Act").

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State's determination was published in the London Gazette on 17th May 2016.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Midland Metro (Birmingham City Centre Extension, etc.) (Land Acquisition and Variation) Order 2016 and comes into force on 14th June 2016.

(**1**) S.I. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755.

(**2**) 1992 c. 42; section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c. 29), section 5 was amended by S.I. 2012/1659.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**3**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**4**);

"the 1980 Act" means the Highways Act 1980(**5**);

"the 1981 Act" means the Acquisition of Land Act 1981(**6**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**7**);

"the 1989 Act" means the Midland Metro Act 1989(**8**);

"the 1990 Act" means the Town and Country Planning Act 1990(**9**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**10**);

"the 1993 Act" means the Railways Act 1993(**11**);

"the 2005 Order" means the Midland Metro (Birmingham City Centre Extension, etc.) Order 2005(**12**);

"address" includes any number or address used for the purposes of electronic transmission;

"authorised tramway" means the street tramway authorised by this Order;

"the authorised works" means the Order works and the works authorised by the 2005 Order;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"the City" means the City of Birmingham;

"cycle track" has the same meaning as in the 1980 Act(**13**);

"the deposited section" means the section certified by the Secretary of State as the deposited section for the purposes of this Order;

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"the Executive" means West Midlands Passenger Transport Executive;

"footpath" and "footway" have the same meaning as in the 1980 Act;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"the land plan" means the plan certified by the Secretary of State as the land plan for the purposes of this Order;

(**3**) 1961 c. 33.
(**4**) 1965 c. 56.
(**5**) 1980 c. 66.
(**6**) 1981 c. 67.
(**7**) 1984 c. 27.
(**8**) 1989 c. xv.
(**9**) 1990 c. 8.
(**10**) 1991 c. 22.
(**11**) 1993 c. 43.
(**12**) S.I. 2005/1794.
(**13**) The definition of "cycle track" was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).

"the limits of deviation" means the limits of deviation for the authorised tramway shown on the works plan;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace, and "maintenance" is to be construed accordingly;

"the Order limits" means—

(a) the limits of deviation; and

(b) the limits of additional land to be used shown on the works plan;

"the Order works" means the authorised tramway and any other works authorised by this Order;

"owner" in relation to land has the same meaning as in section 7 (interpretation) of the 1981 Act(**14**);

"the planning permission" means the outline permission granted to Argent Group plc by Birmingham City Council on 8th February 2013 in respect of planning application number 2012/05116/PA and includes any revision or replacement to, or variation of, that permission that provides for the widening of the highway within Paradise Circus Queensway;

"statutory undertaker" means—

(a) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and

(b) any public communications provider within the meaning of section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(**15**);

"street" includes part of a street;

"street authority" in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

"street tramway" means any part of a tramway which is laid along a street whether or not the section of the street in which its rails are laid may be used by other traffic;

"tramcar" means any vehicle (whether or not used for the carriage of passengers) carried on flanged wheels along the rails of a 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 tribunal" means the Lands Chamber of the Upper Tribunal; and

"the works plan" means the plan certified by the Secretary of State as the works plan for the purposes of this Order.

(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.

(3) All directions, distances, areas, lengths and points stated in any description of works, powers or lands are approximate.

(4) References in this Order to points identified by letters (or letters and numbers) are to be construed as references to the points so marked on the works plan.

(**14**) The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(**15**) 2003 c. 21.

Application of the 1991 Act

3.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(**16**) (dual carriageways and roundabouts) or 184(**17**) (vehicle crossings) of the 1980 Act.

(2) In Part 3 of the 1991 Act, references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major highway works under paragraph (1), to be construed as references to the Executive.

(3) The provisions of the 1991 Act mentioned in paragraph (4), and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Executive under the powers conferred by article 11 (temporary stopping up of streets) where no street works are 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 Executive.

(4) The provisions of the 1991 Act(**18**) referred to in paragraph (3) are—

section 54(**19**) (advance notice of certain works) subject to paragraph (5);

section 55(**20**) (notice of starting date of works) subject to paragraph (5);

section 59(**21**) (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); and

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.

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Incorporation of the Railways Clauses Consolidation Act 1845

4.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**22**) are incorporated in this Order—

section 97 (default in payment of tolls);

(**16**) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).
(**17**) As amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48), section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and section 168 of, and paragraph 9 of part 1 of Schedule 8 and Schedule 9 to, the 1991 Act.
(**18**) Sections 54, 55 and 60 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**19**) As also amended by section 49(1) of the Traffic Management Act 2004.
(**20**) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
(**21**) As amended by section 42 of the Traffic Management Act 2004.
(**22**) 1845 c. 20.

section 103(**23**) (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway)(**24**);

section 144(**25**) (defacing of boards); and

section 145(**26**) (recovery of penalties).

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

"the company" means the Executive;

"goods" includes any thing conveyed on the authorised tramway;

"lease" includes an agreement for a lease;

"prescribed", in relation to any such provision, means prescribed by this Order for the purposes of that provision;

"the railway" means the authorised tramway, together with any authorised works ancillary to the authorised tramway;

"the special Act" means this Order; and

"toll" includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on the authorised tramway.

Application of the Midland Metro Acts

5.—(1) The authorised tramway is to be treated as part of the Metro (as defined in the Midland Metro Acts) for—

(a) the purposes of the following provisions of the 1989 Act—

section 3(3) (incorporation and application of enactments relating to railway);

section 17(1) (transport consultative committee);

section 25 (provisions as to use of electrical energy);

section 46 (power to lop trees overhanging railway);

section 47 (removal of obstructions);

section 49 (byelaws relating to Metro);

section 50 (modification of railway regulation enactments);

section 51 (carriages on Metro deemed public services vehicles);

section 52 (power to contract for police); and

section 54 (powers of disposal, agreements for operation, etc.); and

(b) for the purposes of section 18 (application of landlord and tenant law to Metro leases) of the (No. 2) 1992 Act,

but it is not to be so treated for—

(i) the purposes of the following provisions of the 1989 Act—

section 5(4) and (5) (application of provisions of Public Utilities Street Works Act 1950 and Road Traffic Regulation Act 1984);

(**23**) As amended by the Statute Law Revision Act 1892 (c. 19), part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1892 (c. 48).
(**24**) As amended by Part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101), section 31(6) of the Criminal Law Act 1977 (c. 45) and sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).
(**25**) As amended by sections 84(4) and 93(1) of the Transport Act 1962 (c. 46), section 31(6) of the Criminal Law Act 1977 (c. 45) and sections 37 and 46 of the Criminal Justice Act 1982 (c. 48).
(**26**) As amended by the Statute Law Revision Act 1892 (c. 19) and part 2 of Schedule 12 to the Transport Act 1962.