Order made by the Secretary of State for Transport, subject to special parliament procedure and laid before Parliament under section 1 of the Statutory Orders (Special Procedure) Act 1945 on 8th February 2005, together with the certificate required by section 2(2) of that Act.

DRAFT STATUTORY INSTRUMENTS

2005 No.

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

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

Made - - - -	*26th January 2005*
Laid before Parliament	*8th February 2005*
Coming into force - -	*2005*

Whereas 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 2000(**1**) made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992(**2**) ("the 1992 Act"), for an Order under sections 1 and 5 of the 1992 Act;

And whereas the Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act;

And whereas the Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

And whereas the Secretary of State is satisfied that the provision of alternative rights of way for each of the streets mentioned in Part 2 of Schedule 4 to this Order is not required;

And whereas notice of the Secretary of State's determination was published in the London Gazette on 23rd December 2004;

And whereas the Order will not come into force until it has been laid before Parliament and has been brought into operation in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(**3**).

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 1 and 5 of, and paragraphs 1 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:

(**1**) S.I.2000/2190.
(**2**) 1992 c. 42, amended by S.I. 1995/1541 and 1998/2226.
(**3**) 1945 c. 18 (9 & 10 Geo 6), of which section 3 was amended by section 12 of the Transport and Works Act 1992, and 1965 c. 43.

PART 1

PRELIMINARY

Citation

1. This Order may be cited as the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**4**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**5**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**6**);

"the 1989 Act" means the Midland Metro Act 1989(**7**);

"the 1990 Act" means the Town and Country Planning Act 1990(**8**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**9**);

"the 1993 Act" means the Railways Act 1993(**10**);

"the Applications Rules" means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000;

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

"authorised tramroad" means any tramroad authorised by this Order;

"authorised tramway" means the tramway (consisting of the authorised street tramways and the authorised tramroads) authorised by this Order;

"the authorised works" means the scheduled works and any other works authorised by this 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;

"bridge" includes a viaduct;

"carriageway" has the same meaning as in the Highways Act 1980(**11**);

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

"Dudley" means the metropolitan borough of Dudley;

"the Executive" means West Midlands Passenger Transport Executive;

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

(**4**) 1961 c. 33.
(**5**) 1965 c. 56.
(**6**) 1984 c. 27.
(**7**) 1989 c. xv.
(**8**) 1990 c. 8.
(**9**) 1991 c. 22.
(**10**) 1993 c. 43.
(**11**) 1980 c. 66.

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

"the limits of deviation" means the limits of deviation for the scheduled works shown on the works plans;

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

"the Order limits" means any of—

(a) the limits of deviation, or

(b) the limits of land to be acquired or used shown on the land plans;

"owner" in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;

"Sandwell" means the metropolitan borough of Sandwell;

"the scheduled works" means the works specified in Schedule 1 to this Order or any part of them;

"street" includes part of a street;

"street authority" in relation to a street, has the same meaning as in Part III of the 1991 Act;

"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; or

(b) whether the uppermost surface of the rails is level with, lower than, 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 provide support and guidance for vehicles carried on flanged wheels;

"the tribunal" means the Lands Tribunal; and

"the works plans" means the plans certified by the Secretary of State as the works plans 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, and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

(3) All directions, distances, areas, lengths and points stated in any description of works, powers or lands shall be construed as if the words "or thereabouts" were inserted after each such direction, distance, area, length, and point, and distances between any of the points on the authorised tramway shall be taken to be measured along the centre line of the authorised tramway.

(4) Any reference in this Order to a work identified by the number of the work (or by the number and letter) shall be construed as a reference to the work of that number (or number and letter) authorised by this Order.

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

Application of New Roads and Street Works Act 1991

3.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part III of the 1991 Act (street works) 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) of that Act (which defines what highway authority works are major highway works); 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 of the Highways Act 1980(**12**) (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings).

(2) In Part III of the 1991 Act, references, in relation to major highway works, to the highway authority concerned shall, in relation to works which are major highway works by virtue of sub-paragraph (1), 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 shall 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 14 of this Order 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 referred to in paragraph (3) 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 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) shall have effect as if references in section 57 to 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(**13**) shall be incorporated in this Order—

sections 68 and 69 (accommodation works by company);

section 71 (additional accommodation works by owners);

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 75 (omission to fasten gates);

sections 87 and 88 (contracts with other companies);

section 97 (default in payment of tolls);

sections 103 and 104 (refusal to quit carriage at destination);

(**12**) 1980 c. 66.
(**13**) 1845 c. 20.

section 105 (carriage of dangerous goods on railway);

section 144 (defacing of boards);

section 145 (recovery of penalties);

section 154 (transient offenders).

(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 tramroads and (subject to paragraph (6)) the authorised street tramways, together with any authorised works ancillary thereto;

"the special Act" means this Order;

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

(3) In section 69 of the said Act of 1845, as incorporated in this Order, for the words "determined by two justices" to the end there shall be substituted the words "referred to arbitration".

(4) In section 71 of the said Act of 1845, as incorporated in this Order, the words ", or directed by such justices to be made by the company," shall be omitted, and for the words "authorised by two justices" there shall be substituted the words "determined by arbitration".

(5) Any difference arising under section 72 of the said Act of 1845, as incorporated in this Order, shall be referred to arbitration.

(6) Sections 68, 69, 71 to 73 and 75 of the said Act of 1845, as incorporated in this Order, shall only apply to the railways comprised in the authorised tramroads and any authorised works ancillary to those tramroads.

Application of the Midland Metro Acts

5.—(1) The authorised tramway shall be treated as part of the Metro (as defined in the Midland Metro Acts) for the purposes of the following sections of the following Acts—

(a) sections 3(3), 16, 17, 25, 46 to 52 and 54 of the 1989 Act; and

(b) section 18 of the (No. 2) 1992 Act,

but it shall not be so treated for the purposes of the following—

(i) sections 5(4) and (5), 15, 24, 44 and 45 of the 1989 Act; and

(ii) section 24 of the 1992 Act.

(2) The authorised tramway shall be treated as part of the Metro (as defined in the Midland Metro Acts) for the purposes of sections 4 to 7 of the Midland Metro (Penalty Fares) Act 1991(**14**) and of any order made from time to time under sections 3(2) or 5(2) of that Act (whether made before or after this Order comes into force), and expressions defined in section 2 of that Act shall have effect accordingly.

(3) In the application of the Midland Metro Acts to this Order—

(**14**) 1991 c. ii.