

# Birmingham Eastside Extension

Transport and Works Act 1992

The Transport and Works  
(Applications and Objections Procedure)  
(England and Wales) Rules 2006

## Explanatory Memorandum



**WEST MIDLANDS**  
COMBINED AUTHORITY

## TRANSPORT AND WORKS ACT 1992

### TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006 – Rule 10(2)(b)

### MIDLAND METRO (BIRMINGHAM EASTSIDE EXTENSION) ORDER 201[•]

## EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article of and Schedule to 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.1466).

Application for the Order has been made by the West Midlands Combined Authority (“the Authority”), the body established under the West Midlands Combined Authority Order 2016 and which replaced the West Midlands Passenger Transport Executive. The Order would confer powers on the Authority for the construction and operation of a new tramway in the city of Birmingham as an extension to the existing Midland Metro tramway system. The proposed new tramway would join the existing tramway from the junction of Bull Street and Corporation Street, running east along Lower Bull Street and into Albert Street, across Moor Street Queensway, continuing south under the proposed new High Speed 2 station at Curzon Street and along New Canal Street and Meridien Street, before continuing east along High Street Deritend where the system terminates west of Heath Mill Lane.

This draft Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006 No.1954) (“the model clauses”) but on occasion it departs from the model clauses. Where there is a material departure from the model clauses, an explanation is provided below. In most cases, precedents have been followed such as the other Midland Metro Orders made to date (particularly the Midland Metro (Wolverhampton City Centre Extension) Order 2016 (S.I. 2016 No. 684)), Nottingham Express Transit System Order 2009 (S.I. 2009 No. 1300) (“the NET Order”) and the Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005 No. 120) (“the Merseytram Order”) as comparable orders made in relation to tramways in other cities (as well as Birmingham).

## PART 1

### PRELIMINARY

Part 1 contains preliminary provisions

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

**Article 2 (Interpretation)** contains provisions for the interpretation of words and phrases used in the Order. Definitions additional and distinct from 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. This is particularly the case in respect of the distinction between a street tramway and a tramroad to allow the Authority flexibility when implementing the authorised works.

**Article 3 (Incorporation of the Railway Clauses Consolidation Act 1845)** incorporates, subject to amendments, certain provisions of the Railway Clauses Consolidation Act 1845 (c.20) relevant to tramways. The article amends those provisions referred to in the model clauses to make them relevant to this Order.

**Article 4 (Application of Midland Metro Acts)** applies certain provisions of the Midland Metro Acts 1989 to 1992 to the authorised tramway to ensure consistency with the other enabling powers in respect of the Midland Metro.

The provisions of the Midland Metro Act 1989 applied in this instance are as follows:-

**Section 3(3) (Incorporation and application of enactments relating to railways)** disappplies certain railway-related enactments in respect of the Midland Metro.

**Section 16 (Agreements with British Railways Board)** provides that the Authority and the British Railways Board may enter into agreements for the transfer to the Authority of the Board's property. The article provides that references to the British Railways Board in this context are to be treated as references to a person holding a licence under section 8 of the Railways Act 1993 Act or a person exempt, by virtue of section 7 from the requirement to be authorised by such a licence.

**Section 17 (Transport consultative committee)** applies section 56 (functions of transport consultative committees) of the Transport Act 1962 to the Midland Metro, except that this provision (together with section 54 (advance notice of discontinuance of certain services to be published) of the Transport Act 1962) shall not apply in respect of the discontinuance of existing services where the discontinuance is for the purposes of, or in connection with, the construction of the Midland Metro.

**Section 25 (Provisions as to use of electrical energy)** provides that certain conditions and obligations apply to the Authority where electrical energy is used for the purposes of the Midland Metro.

**Section 46 (Power to lop trees overhanging the railway)** confers powers on the Authority to cut and lop trees in or near the Midland Metro which may interfere with operations.

**Section 47 (Removal of obstructions)** confers powers on the Authority to remove vehicles or loads obstructing the Midland Metro.

**Section 48 (For better prevention of trespass on railways)** provides that trespassers on the Midland Metro, or on the land of the Authority in dangerous proximity to the Midland Metro, shall be guilty of any offence.

**Section 49 (Byelaws relating to the Metro)** confers powers on the Authority to make byelaws in respect of the Midland Metro.

**Section 50 (Modification of railway regulation enactments)** modifies maximum fines for offences under specific enactments.

**Section 51 (Carriages on Metro deemed public service vehicles)** enables the Authority to appoint a day from which regulations made (or having effect as if made) under section 25 or 60(1)(k) (regulation of conduct of passengers and lost property) of the Public Passenger Vehicles Act 1981 shall have effect as if the carriages used on the Midland Metro were public service vehicles used in the provision of a local service within the meaning of the Transport Act 1985.

**Section 52 (Power to contract for police)** confers powers on the Authority to make arrangements for the employment of the police for police duty on the Midland Metro.

**Section 54 (Powers of disposal, agreements for operation, etc.)** confers powers on the Authority to sell, lease, charge or otherwise dispose of the whole or any part of the Midland Metro or the right to operate the Midland Metro.

The provisions of the Midland Metro Act (No. 2) 1992 applied in this instance are as follows:-

**Section 18 (Application of landlord and tenant law to Metro leases)** provides that no enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement entered into by the Authority with any person under section 54(2) of the Midland Metro Act 1989 so far as relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

**Article 5 (Application of 1991 Act)** provides for the application of the New Roads and Street Works Act 1991 (1991 c.22). Unlike the model clauses, as well as providing for how provisions of that Act will apply to the works executed under the powers of the Order, it also provides that certain provisions will not apply. The relevant provisions are set out in a list in paragraph (3). These provisions are relatively standard in projects of this type (see, for example, the NET Order (article 4) and the Merseytram Order (article 4)) and are considered appropriate in these circumstances.

## PART 2

### WORKS PROVISIONS

Part 2 of the Order contains provisions for and relating to the construction of works.

**Article 6 (Power to construct and maintain works)** authorises the construction and maintenance by the Authority of the tramway and the other scheduled works which are described in *Schedule 1* to the Order and shown on plans and sections deposited in connection with the application. The authorised tramway and all other works must be constructed within the limits of deviation described in article 7 (power to deviate, etc.).

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) and (4). 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, or for purposes ancillary to, the construction of the scheduled works. Such variation to the model clauses has several precedents in various Transport and Works Act Orders.

Paragraph (4) reflects the general power in the model clauses for the Authority to carry out and maintain other works (of any nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised tramway. However, the model clauses are amended, insofar as the limit contained therein that this power does not apply to navigable watercourses has been removed, to reflect the need for such powers in order to construct and maintain the scheduled works.

In a further extension to the model clauses, paragraph (5) provides for the removal of temporary or other works which are no longer required by the Authority, reflecting the fact that this is an extension to an existing operational tramway. Paragraph (6) allows for the accommodation of apparatus of third parties in conduits, etc., constructed by the Authority for the purposes of the authorised works. Such provisions can be found in other Orders (such as the NET Order (article 5)) and are useful to allow the Authority to construct the authorised tramway system adequately and economically.

Paragraphs (7) and (8) depart from the model clauses in allowing works within the boundaries of any street rather than only streets used for or having a junction with a street along which the tramway system is constructed. This is necessary since works may be required further away, e.g. by way of utility diversions. The requirement to obtain the consent of the street authority for works outside the Order limits is maintained.

The article also disapplies certain provisions of certain Acts in relation to the works authorised under the article. The provisions disapplied relate to drainage. In particular, paragraph (9) disapplies elements of the Environmental Permitting (England and Wales) Regulations 2010, Water Resources Act 1991 and the Land Drainage Act 1991. Such a provision can be found in the Midland Metro (Wolverhampton City Centre Extension) Order 2016.

Provision has also been inserted, by way of paragraph (11), enabling the Authority and a body responsible for any street furniture or apparatus to enter into agreements for that body to undertake any required works itself, either under the powers of the order or under its own powers, rather than the Authority having to do so under the powers of the Order. This provides additional flexibility, e.g. in arriving at appropriate arrangements with utilities for diversionary works and avoids any uncertainty arising as to whether such a body's powers can be exercised for the purposes of the scheduled works.

**Article 7 (Power to deviate)** permits the Authority, in constructing and maintaining the works, to deviate (within specified limits) from the lines or situations shown on the works and land plans and sections. It also allows the laying of alternative lines of rails for the authorised street tramway or tramroad (subject to the consent of the street authority being required in the case of the authorised street tramway).

**Article 8 (Designation of works)** provides that if, due to the creation or extinguishment of rights of way, a tramroad would become or becomes a street tramway, or vice versa, this will not affect the way the Order takes effect. This provision, which is not in the model clauses, is intended to cater for changing circumstances and has precedent in article 7 of the NET Order, for example.

**Article 9 (Power to alter layout, etc., of streets)** permits the Authority to alter the layout of streets in order to accommodate the introduction of the authorised tramway with the consent of the street authority (not to be unreasonably withheld) or, in the case of the alterations respecting certain streets detailed in *Schedule 2*, without further reference to the street authority. With the consent of the street authority, the powers conferred on the Authority are wide-ranging, including alterations to the width, level or surface. These provisions are required in order to ensure the most appropriate fit for the tramway system.

**Article 10 (Power to keep apparatus in streets)** permits the Authority to 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. The consent of the street authority is required for these powers to be used in streets outside of the Order limits.

**Article 11 (Power to execute street works)** provides that, for the purpose of exercising the powers conferred by Article 10 (Power to keep apparatus in the streets) and other provisions of the Order, the Authority may enter upon and carry out works in any street in which the tramway is laid or which has a junction with it. The consent of the street authority is required for streets outside of the Order limits.

**Article 12 (Stopping up of streets)** gives the Authority the power to permanently stop up streets in connection with the construction of the authorised works. *Schedule 3* is referenced, which contains both streets to be stopped up for which a substitute is to be provided those streets to be stopped up for which no substitute is to be provided. In the case of the former, the street cannot be stopped up until the substitute is practically completed and open for use. In the latter case, certain conditions must be met before they can be stopped up. Part 1 of the Land Compensation Act 1961 applies in respect of loss suffered by any person as a result of the exercise of these powers.

**Article 13 (Temporary stopping up of streets)** gives the Authority the power temporarily to stop up, alter or divert streets during and for the purposes of the execution of the authorised works. The street authority must be consulted in respect of the exercise of this power in relation to streets specified in *Schedule 4*. For any other street, the consent of the street authority is required (not to be unreasonably withheld). The Authority is also given the power in paragraph (2) to use any street stopped up as a temporary working site. Part 1 of the Land Compensation

Act 1961 applies in respect of loss suffered by any person as a result of the exercise of these powers. The powers under this article are subject to Schedule 9.

**Article 14 (Access to works)** confers a power for the Authority to provide or improve access at such locations within the Order limits as the Authority reasonably requires for the purposes of the authorised works as may be approved by the highway authority (such approval not to be unreasonably withheld). This provision is based on article 11(b) of the model clauses. Article 11(a) of the model clauses is not necessary in these circumstances.

**Article 15 (Construction and maintenance of new, altered or diverted highways)** makes provision for street alterations or diversions to be completed to the reasonable satisfaction of the highway authority (or the street authority in the case of alterations or diversions) and for their maintenance by the Authority for a period of 12 months, and by the relevant authority thereafter. In addition to the model clauses provisions, paragraph (3) makes it explicit that, except as provided in the article, the Authority shall not be liable to maintain the surface of any street in, on, under or over which the scheduled works are constructed, or the immediate approaches to any such street, unless otherwise agreed with the street authority. This provision has precedent in article 14 of the NET Order and article 14 of the Merseytram Order and is considered necessary for the sake of clarity. Other than this, the wording reflects the model clauses.

**Article 16 (Restoration of streets if street tramway discontinued)** makes provision to require the Authority to remove from the street any authorised street tramway which is discontinued and to restore, to the reasonable satisfaction of the street authority, the street to its former condition. This is based on clause 15 of the model clauses.

**Article 17 (Agreements with street authorities)** would authorise the street authorities and the Authority to enter into agreements relating to the construction of new streets, works in or affecting streets and the stopping up, alteration or diversion of streets. It varies from the model clauses in paragraph (1), providing for further matters on which the Authority may reach agreement with the street authority, as it is appropriate and necessary in these circumstances in order to provide for integration of the authorised tramway with the surrounding streets.

**Article 18 (Level crossings)** takes clause 16 of the model clauses as a starting point and would permit the Authority to construct and maintain the tramway system on the level across any highway or other road crossing the route of the system (including alter the level of any highway or road). In respect of such crossings, the Authority could provide, maintain and operate at or near any new road crossing protective equipment, as defined. Of such protective equipment, any traffic sign which is put in place is to be treated as if placed under the Road Traffic Regulation Act 1984. The Authority may also enter into agreements with the highway authority as to the exercise of these powers, which may include payment or otherwise. This article is similar to article 18 of the NET Order and article 18 of the Merseytram Order which make specific provision for roads crossing the system after it is constructed.

**Article 19 (Attachment of equipment to buildings)** would authorise the Authority to affix brackets and other apparatus and equipment required for the authorised tramway to any buildings within the permanent limits. The provision is a variation on model clause 17. As with article 19 of the NET Order, the provision expressly authorises the affixing of street lighting and CCTV equipment as well as overhead line equipment.

**Article 20 (Discharge of water)**, which is based on clause 18 of the model clauses, would enable the Authority to discharge water into any watercourse, public sewer or drain, in connection with the construction and maintenance of the proposed works. This must be with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to certain other conditions.

**Article 21 (Works to safeguard buildings and the operation of the authorised tramway)** would permit the Authority to carry out certain safeguarding works before, during or after construction of the authorised works (up to a period of 5 years after the authorised works are opened for use) to buildings which may be affected by the works. Provision is made for certain

restrictions and the payment of compensation. Paragraph (11)(c) is in addition to the model clauses but has its precedent in the NET Order (article 22(11)(c)) and the Merseytram Order (article 22(11)(b)(iii)). Its intention is to expand slightly the purposes for which safeguarding works may be carried out, to include works to secure the safe operation of the authorised tramway, for example, to carry out works to structures overhanging or adjacent to the authorised tramway which are in a dangerous condition – such works might not be covered by subparagraphs (a) and (b).

**Article 22 (Power to survey and investigate land, etc.)** would confer on the Authority the power to survey and investigate land and to make trial holes after notifying the owners and occupiers of the land, and includes provision for the payment of compensation. In addition to the provisions of the model clauses, the Authority would be authorised to 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. Such a provision has precedent in the NET Order (article 25(1)(d)) and the Merseytram Order (article 25(1)(d)) and is considered to be a useful and appropriate extension to these preparatory powers.

**Article 23 (Mode of construction and operation of tramway)** is based on clause 22 of the model clauses but is modified to reflect the now commonplace revised maintenance duty as included in other Orders such as Greater Manchester (Light Rapid Transit System) Order 2006 (S.I. 2006 No. 405) and article 26 of the NET Order. It specifies the manner in which the authorised tramway is to be constructed (so that the street or other place along which it runs is safe for all users having regard to the character and usage of the street or other place). The article specifies that electricity is to be the motive power for the tramway (other than in an emergency or for the purposes of maintenance) and provides for the gauge of the authorised tramway to be 1,435 millimetres.

Paragraph (5) makes provision for certain works in a street along which an authorised street tramway is constructed to require the consent of the Authority. The works concerned are works which may affect the Authority's obligations under this article in relation to maintaining the safety of the street. This provision is not in the model clauses but is considered necessary on the grounds of protecting the tramway and also public safety. It is based on article 26(5) of the NET Order.

**Article 24 (Obstruction of construction of authorised works)** would make obstructing the construction of the proposed works or interfering with apparatus belonging to a person acting under the authority of the Authority a criminal offence.

**Article 25 (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 26 (Removal of human remains)** requires the Authority, before it carries out any development or works which will or may disturb any human remains, to remove those remains. Before removing any human remains, the Authority is required to publish notice of its intention to do so. Notice is also required to be displayed near the site and a copy of the notice sent to Birmingham City Council. Any relative or personal representative of any deceased person whose remains are proposed to be removed may undertake the removal of the remains themselves and arrange for those remains to be re-interred or cremated, the Authority being responsible for the reasonable costs in doing so. In the event that such relative or personal representative does not remove the remains, the Authority is required to comply with any reasonable request the relative or personal representative may make in relation to the removal and re-interment or cremation of the remains. Any dispute which may arise as to whether a person is the relative or personal representative of the person whose remains are proposed to be removed or as to the identity of the remains in question is to be determined in the county court. The Authority is required to certify to the Registrar General the date of re-interment or cremation and the place from which the remains were removed and the place where the remains were re-interred or cremated. A copy of the certificate is required to be sent to Birmingham City Council. The removal of any remains by the Authority is required to be carried out in accordance with any directions which may be given by the Secretary of State. This article

also disapplies section 25 of the Burial Act 1857 (which requires a licence to remove human remains) and the Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950 (“the 1950 Regulations”) (which contains provisions restricting the use of burial grounds by acquiring authorities until certain actions have been taken) as it is considered the provisions of the article provide adequate alternative protection. There are numerous precedents for this article, including in the Nottingham Express Transit System Order 2009 and the London Underground (Bank Station Capacity Upgrade) Order 2015. Whilst not an Order under the Transport and Works Act 1992, the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (a Development Consent Order made under the Planning Act 2008) disapplies the 1950 Regulations.

### PART 3

#### ACQUISITION AND POSSESSION OF LAND

Part 3 of the Order contains provisions for the compulsory acquisition of land and rights in land and for the temporary possession of land for the purposes of or in connection with the intended works and the Authority’s tramway system undertaking.

**Article 27 (Power to acquire land)** would authorise the compulsory acquisition of the land shown on the plans deposited in connection with the application so far as required for the purposes of the intended works, or for any other purposes connected with the Authority’s tramway system undertaking.

**Article 28 (Application of Part 1 of the 1965 Act)** provides for Part 1 of the Compulsory Purchase Act 1965 (as modified by the Order) to apply to the acquisition of land under the Order as it would to a compulsory purchase order made under the Acquisition of Land Act 1981.

**Article 29 (Application of Compulsory Purchase (Vesting Declarations) Act 1981)** provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981, which contains vesting procedures for land subject to compulsory purchase powers.

**Article 30 (Powers to acquire new rights)** would permit the Authority to create and acquire easements and other new rights affecting land rather than acquiring the whole interest in any land. For this purpose, various enactments concerning compulsory acquisition and compensation would have effect as modified by Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights) to the Order.

**Article 31 (New rights only to be acquired in certain lands)** provides that the Authority’s powers of compulsory acquisition under article 27 (power to acquire land) and article 30 (powers to acquire new rights), in respect of the land specified in Schedule 5 (acquisition of new rights only), is limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of exercising the powers of article 20 (attachment of equipment to buildings), i.e. in relation to the affixing of equipment or for the creation of new rights of way within the permanent limits. This provision is not a model clause but forms part of the overall mechanism (by way of compulsory purchase) by which the rights to affix equipment compulsorily are obtained, together with the creation of new rights of way.

**Article 32 (Rights under or over streets)** provides that the Authority may use a street for the works without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation.

**Article 33 (Special category land)** provides for the discharge of all rights, trusts and incidents which the open space within the Order limits is subject to, upon the entry by the Authority onto that land under the powers of the Order.

**Article 34 (Temporary use of land for construction of works)** provides that the Authority may take temporary possession of land (i) specified in Schedule 7 (land of which temporary possession may be taken) and (ii) that it may acquire compulsorily in so far as it has not already

begun the compulsory acquisition process in relation to that land, for the construction of the authorised works. Paragraph (ii) is additional to the model clauses but has its precedent in the NET Order (article 26(1)(a)(ii)) and the Merseytram Order (article 36(1)(a)(ii)), and simply allows the Authority to take possession of land in advance of its compulsory purchase. The Authority would not be permitted to remain in possession of the land for a period of more than 2 years (not 1 year as in the model clauses) after the completion of the works as specified in that Schedule. The NET Order (article 36(2)) and the Merseytram Order similarly provided for a period of 2 years (article 36(3)). The article would also require the payment of compensation to the owners and occupiers of the land subject to temporary possession.

**Article 35 (Temporary use of land for maintenance of works)** provides that the Authority may take temporary possession of land within the Order limits required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work in the 5 years following the beginning of public use of the works. Temporary works can be constructed on the land as reasonably necessary. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied.

Paragraph (10) (which requires the consent of the street authority) is additional to the model clauses but is considered to be an appropriate protection for the benefit of the street authority concerned and has precedent in the NET Order (article 37(10)) and the Merseytram Order (article 37(10)).

**Article 36 (Disregard of certain interests and improvements)** provides for disregarding certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

**Article 37 (Set-off for enhancement in value of retained land)** provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Lands Chamber of the Upper Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

**Article 38 (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 39 (Acquisition of part of certain properties)** would apply when the Authority acquires a part rather than the whole of properties subject to compulsory acquisition and contains a procedure enabling the relevant owner in certain circumstances to require the whole to be taken, with disputes being determined by the Lands Chamber of the Upper Tribunal. It replaces section 8(1) of the Compulsory Purchase Act 1965.

**Article 40 (Extinction or suspension of private rights of way)** provides for the extinction or suspension of private rights of way over land subject to compulsory acquisition or appropriation for the purposes of the Order. Such rights are suspended where the Authority takes temporary possession, until this is given up. Provision for notification and the payment of compensation is included. In addition to the provisions of the model clauses, the article provides for the Authority to enter into agreements making contrary provision and for the Authority to exclude the application of the provisions of this article. Such provision has precedent in the Merseytram Order (article 40) and is useful for the purposes of flexibility.

**Article 41 (Time limit for exercise of powers of acquisition)** provides a time limit of 5 years from the coming into force of the Order for the exercise of the proposed powers of acquisition and temporary possession.

## PART 4

## OPERATION OF TRAMWAY SYSTEM

**Article 42 (Power to operate and use tramway system)** would authorise the Authority to operate and use the authorised tramway system for the carriage of passengers and goods and grants to the Authority exclusive rights in relation to the operation of the tramway system, supported by the creation of a criminal offence for unlawful use. It is similar to model clause 37.

**Article 43 (Power to charge fares)** enables the Authority to collect charges for the carrying of passengers on the authorised tramway and for any connected services or facilities.

**Article 44 (Traffic signs)** would enable the Authority to place and maintain traffic signs for the purposes of the authorised tramway and makes provision requiring the Authority to consult with and to enter into arrangements with the traffic authority for this purpose. It also modifies the Road Traffic Regulation Act 1984 to have application to the tramway system.

**Article 45 (Traffic regulation)** would, for a period of 12 months following the opening of the tramway, allow the Authority, with the consent of the local traffic authority, to:

- permit, prohibit, or restrict the stopping, waiting or loading or unloading of vehicles along certain roads;
- make provision as to the direction of vehicular traffic;
- permit or prohibit vehicular access to certain roads;
- make provision in respect of pedal cycling;
- make provisions in respect of parking; and
- revoke, amend or suspend any order made under the Road Traffic Regulation Act 1984 ("RTRA 1984"),

in each case as specified in Schedule 8. The permissive powers included in this provision are considered to be a necessary corollary to the intention of the article and have a precedent in article 50(1) of the NET Order and article 47(1) of the Merseytram Order.

As in article 47 of the Merseytram Order, in addition to the model clauses' provisions, this article also includes more general powers at paragraph (2) in relation to traffic regulation, allowing the Authority, in so far as it is necessary or expedient for the purposes of the construction, maintenance or operation of the authorised tramway, to:

- revoke, amend or suspend in whole or in part any order made under the RTRA 1984;
- permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- authorise the use as a parking place of any road;
- make provision as to the direction or priority of vehicular traffic; and
- permit or prohibit vehicular access to any road.

A requirement is included in the article for the chief officer of police to be notified in advance of the exercise of the powers under paragraphs (1) and (2) of the article. The article also includes a specific power to vary or revoke provisions made under the article.

These provisions are considered to be fundamental in order properly to put into place the authorised tramway system. The flexibility they afford will be necessary in order to adapt to refinements to the design of the project and to deal with the construction period effectively.

## PART 5

### MISCELLANEOUS AND GENERAL

**Article 46 (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 Authority for planning purposes.

**Article 47 (Statutory undertakers, etc.)** introduces Schedule 9 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 48 (Minerals)** provides that the rights of persons entitled to mines and minerals are not affected by the Order, but that liability is preserved for damage to the authorised tramway caused by the exercise of mines or minerals rights.

**Article 49 (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 50 (Disclosure of confidential information)** makes it a criminal offence to disclose confidential information obtained upon entry to premises under articles 22 (safeguarding works to buildings) or 23 (power to survey and investigate land).

**Article 51 (Defence to proceedings in respect of statutory nuisance)** provides the Authority with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990 (c. 43) if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 of the Control of Pollution Act 1974 (c. 40), or that the nuisance complained of is a consequence of the operation of the works authorised by the Order and that it cannot reasonably be avoided. Although not one of the model clauses, this is a provision which has now become common. Article 26 of the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010 No. 1721) is a recent precedent.

**Article 52 (Certification of plans, etc.)** provides for the Authority to submit to the Secretary of State for certification the book of reference, the works and land plans, and the traffic regulation plans after the making of this Order.

**Article 53 (Service of notices)** makes provisions as to the service of notices or other documents for the purposes of this Order.

**Article 54 (Arbitration)** makes provision for differences arising under any provision of this Order to be determined by arbitration.

**Article 55 (Repeals of the 1989 Act)** repeals section 15(5) of the Midland Metro Act 1989. That provision requires the Authority to submit details of the proposed rolling stock to be used on any of the Midland Metro network (which would include the proposed scheme) for approval from the Secretary of State. It is considered that section 15(5) places an unnecessary regulatory burden on the Authority as rolling stock used on the Metro system is already subject to the statutory safety regime put in place by the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended). New rolling stock with catenary-free capability will shortly be introduced onto the Metro network and, accordingly, it is expedient for the Order to remove the unnecessary administrative burden imposed by section 15(5) of the 1989 Act by repealing the provision under the power provided by section 5(3)(b) of the Transport and Works Act 1992.

**Article 56 (For protection of railway interests)** introduces Schedule 10 which contains provisions for the protection of Network Rail.

**Article 57 (For protection of the Environment Agency)** introduces Schedule 11 which contains provisions for the protection of the Environment Agency.