
STATUTORY INSTRUMENTS

2005 No. 120

The Merseytram (Liverpool City Centre to Kirkby) Order 2005

PART 2

WORKS PROVISIONS

Supplemental powers

Attachment of equipment to buildings

19.—(1) Subject to the following provisions of this article, Merseytravel may affix to any building for the time being constructed on any land mentioned in Part 1 of the book of reference, and any building (or replacement of that building) mentioned in Part 2 of the book of reference—

- (a) any brackets, cables, wires, insulators and other apparatus required in connection with the authorised tram system; and
- (b) any lamps, brackets, pipes, electric lines and other apparatus required for the provision of additional or substitute street lighting in consequence of the construction of the authorised tram system.

(2) Paragraphs (3) to (5) and (8) do not apply to any building for the time being constructed on any land referred to in Schedule 8 to this Order.

(3) Merseytravel shall not under this article affix any apparatus to a building without the written 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.

(4) Where—

- (a) Merseytravel 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.

(5) Where, in the opinion of Merseytravel, 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.

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

- (a) any owner for the time being of the building may serve on Merseytravel not less than 56 days' notice requiring Merseytravel 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) Merseytravel shall have the right as against any person having an interest in the building to use and maintain the apparatus.

(7) Where, in the opinion of Merseytravel, a requirement temporarily to remove any apparatus affixed to a building under this article during any reconstruction, demolition or repair of the building is not reasonably necessary for that purpose, Merseytravel may refer the matter to an arbitrator under article 77, who may either allow the apparatus to be temporarily removed or may order that it shall not be temporarily removed.

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

(9) In this article—

“building” includes any structure and a bridge or aqueduct over the street; and

“relevant owner”—

(a) in relation to a building occupied under a lease or tenancy having an unexpired term exceeding 5 years, means that 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.

Temporary closure of part of Canning Dock, Duke's Dock, Wapping Basin and Salthouse Dock

20.—(1) In this article “the waterways” means those parts of Canning Dock, Duke's Dock, Wapping Basin and Salthouse Dock that lie within the Order limits.

(2) Merseytravel may, during and for the purpose of the construction of the authorised works, temporarily close and de-water all or any part of the waterways and divert barges and other boats from all or any part of the waterways.

(3) During the period of the closure referred to in paragraph (2), all rights of navigation along, and any obligations of the British Waterways Board to maintain for navigation, the waterways or part thereof so closed shall be suspended and unenforceable against the British Waterways Board.

(4) Any person who suffers loss by the suspension of any right under this article shall be entitled to be paid compensation by Merseytravel, to be determined in the case of dispute by the tribunal.

Discharge of water

21.—(1) Merseytravel may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits or in any street along which any authorised street tramway is authorised to be laid, make openings into, and connections with, the watercourse, sewer or drain.

(2) Merseytravel 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) Merseytravel 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) Merseytravel shall not, in the 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) Merseytravel 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⁽¹⁾.

(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, a local authority, or a harbour authority within the meaning of the Harbours Act 1964⁽²⁾;
- (b) “watercourse” includes all docks, rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows, except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Safeguarding works to buildings

22.—(1) Subject to the following provisions of this article, Merseytravel may at its own expense and from time to time carry out such safeguarding works to any building lying within the Order limits as Merseytravel 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 (other than works authorised by this article); or
- (b) after the completion of the construction of that part of the authorised works (other than works authorised by this article), 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 Merseytravel 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 Merseytravel may (subject to paragraphs (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 and any land belonging to it; or
- (d) a right under paragraph (4)(b) to enter land;

Merseytravel 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.

(1) 1991 c. 57.

(2) 1964 c. 40.

(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 77.

(7) Merseytravel 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;

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

(9) Without prejudice to article 76, nothing in this article shall relieve Merseytravel 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) 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;
 - (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; and
 - (iii) any works the purpose of which is to secure the safe operation of the tram system or to prevent or minimise the risk of such operation being disrupted.

Power to construct temporary street tramways

23.—(1) Merseytravel may, if it considers it necessary or expedient in consequence of any 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 street 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 shall not be unreasonably withheld.

(3) The provisions of articles 8(2), 9, 10 and 46 shall apply in relation to temporary street tramways laid under this article as they apply in relation to the authorised street tramways.

Planning permission: supplementary matters

24.—(1) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

(2) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(3) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975(4), or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part III of that Act for the purposes of that Part.

(3) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999(5) as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not be treated as an outline planning permission.

Power to survey and investigate land, etc.

25.—(1) Merseytravel may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits or any building (or replacement of that building) mentioned in Part 2 of the book of reference, any street along which any authorised street tramway is authorised to be laid and any street having a junction with such a street;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as Merseytravel 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 any such 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 of the 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 Merseytravel—

- (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 to carry out the survey or investigation or to make the trial holes.

(3) S.I.1969/17.
(4) S.I. 1975/148.
(5) S.I 1999/1892.

(4) No trial holes 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) Merseytravel shall pay 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.

(6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(6).

Mode of construction and operation of tram system

26.—(1) The authorised tram system shall be operated by electricity or, in an emergency or for the purposes of maintenance, by diesel power or other means.

(2) The authorised street tramway and authorised tramroad 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 making a payment) Merseytravel 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) Merseytravel 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.

Obstruction of construction of authorised works

27. Any person who, without reasonable excuse, obstructs another person from constructing any of the authorised works under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Removal of human remains

28.—(1) In this article “the specified land” means the land in the City of Liverpool numbered 433 and 434 on the works and land plans.

(2) Before Merseytravel begins to use any part of the specified land for the construction of any of the authorised works therein it shall remove, or cause to be removed, from that part of the specified land the remains of all deceased persons interred therein in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land Merseytravel shall give notice of such intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing it once in each of two successive weeks in a newspaper circulating in the City of Liverpool; and
- (b) displaying it in a conspicuous place upon or near to the specified land.

(4) Forthwith after the first publication of a notice under paragraph (3) Merseytravel shall send a copy of the notice to the Library Records Office, Central Library, William Brown Street, Liverpool L3 8EW.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to Merseytravel of his intention to undertake the

removal of such remains, and thereupon, if such remains can be identified, he shall be at liberty to cause such remains to be removed and reinterred in any burial ground or cemetery in which burials may legally take place, or to be removed to, and cremated in, any crematorium, and forthwith after such reinterment or cremation shall provide to Merseytravel a certificate for the purpose of enabling compliance with paragraph (10).

(6) If any person giving such notice as aforesaid fails to satisfy Merseytravel that he is such personal representative or relative as he claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by the county court, and the court shall have power to make an order specifying who shall remove the remains and as to the payment of the costs of the application.

(7) Merseytravel shall defray the reasonable expenses of the removal and reinterment or cremation of such remains.

(8) If—

- (a) within the said period of 56 days no notice under paragraph (5) has been given to Merseytravel in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days thereafter; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than Merseytravel, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified;

subject to paragraph (9) Merseytravel shall remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as Merseytravel thinks suitable for the purpose and so far as possible remains from individual graves shall be reinterred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If any personal representative or relative has given notice under paragraph (5) and has satisfied Merseytravel that he is such personal representative or relative as he claims to be, and that the remains in question can be identified, but does not remove the remains, Merseytravel shall comply with any reasonable request he may make in relation to the removal and reinterment or cremation of the remains.

(10) Upon the reinterment or cremation of any remains under this article—

- (a) a certificate of reinterment or cremation shall be sent to the Registrar General by Merseytravel giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
- (b) a copy of the certificate of reinterment or cremation and the record mentioned in paragraph (8) shall be sent to the Library Records Office mentioned in paragraph (4).

(11) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or power conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(7) shall not apply to a removal carried out in accordance with this article.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
