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STATUTORY INSTRUMENTS

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**2001 No. 3627**

**The South Hampshire Rapid Transit Order 2001**

**PART II**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct works**

5.—(1) The undertaker may construct and maintain the scheduled works.

(2) Subject to article 6 below, the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (6) below, the undertaker may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of the construction of the scheduled works, namely—

- (a) stations, platforms and stopping places;
- (b) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised transit system;
- (c) works for the strengthening, alteration or demolition of any building or structure;
- (d) works to alter the position of any street furniture or apparatus, including mains, sewers, drains and cables;
- (e) works to alter the course of, or otherwise interfere with, rivers, streams or watercourses;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works; and
- (g) replacement facilities and works for the benefit or protection of premises affected by the other authorised works.

(4) Subject to paragraph (6) below, the undertaker may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of the construction of the scheduled works.

(5) The undertaker may remove any works constructed by it pursuant to this Order which have been constructed as temporary works or which it no longer requires.

(6) Paragraphs (3) and (4) above shall only authorise the carrying out or maintenance of works—

- (a) within the limits of deviation for the scheduled works shown on the works plans;
- (b) within the boundaries of any street along which the construction of a street tramway is shown on the works plans or which has a junction with such a street; or
- (c) on land specified in columns (1) and (2) of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Schedule.

### **Power to deviate**

- 6.—(1) In constructing or maintaining any of the scheduled works, the undertaker may—
- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation for that work shown on those plans; and
  - (b) deviate vertically from the levels shown on the sections—
    - (i) to any extent not exceeding 3 metres upwards; and
    - (ii) to any extent downwards.

(2) In constructing or maintaining any work or part of a work shown on the works plans as being situated in a street and for which no limits of deviation are shown on that plan the undertaker may deviate laterally within the boundaries of that street.

(3) The undertaker may in constructing or maintaining any of the authorised street tramways lay down—

- (a) double lines of rails in lieu of single lines;
- (b) single lines of rails in lieu of double lines;
- (c) interlacing lines of rails in lieu of double or single lines; or
- (d) double or single lines of rails in lieu of interlacing lines.

(4) The power in paragraph (3) above shall not be exercised in the case of any authorised street tramway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The undertaker may in constructing and maintaining any of the authorised tramroads provide within the limits of deviation for those tramroads such number of lines of rails and sidings as may be necessary or expedient.

### **Designation of works**

7.—(1) Notwithstanding anything in the description of scheduled works contained in Schedule 1 to this Order, the whole or any part of an authorised street tramway or authorised tramroad may be constructed within the limits of deviation for that work either along a street as a street tramway or off-street as a tramroad and shall be treated for the purposes of this Order as if it were so designated.

(2) Where, by means of the creation or extinction of rights of way, any part of the authorised transit system which has been constructed as a tramroad becomes a street tramway or any part which was constructed as a street tramway becomes a tramroad, it shall be treated for the purposes of this Order as if it were so designated.

## *Streets*

### **Power to alter layout of streets**

8.—(1) The undertaker may alter the layout of any street specified in columns (1) and (2) of Schedule 3 to this Order in the manner specified in relation to that street in column (3) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) above but subject to paragraph (3) below, the undertaker may for the purpose of constructing, maintaining or using any authorised street tramway alter the layout of the street along which the street tramway is or is to be laid and the layout of any street having a junction with such a street; and, without prejudice to the generality of the foregoing, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycletrack or verge;
- (c) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for rapid transit vehicles or by carrying out other works for that purpose;
- (d) carry out works for the provision or alteration of parking places;
- (e) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999(1) and which are carried out in compliance with those Regulations;
- (f) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than rapid transit vehicles from passing along the transit system; and
- (g) make and maintain crossovers, sidings or passing places.

(3) The powers in paragraph (2) above shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

#### **Power to keep apparatus in streets**

9.—(1) The undertaker may, for the purposes of or in connection with the construction, maintenance and use of the authorised transit system, place and maintain in any street in which the transit system is or is to be laid and in any street having a junction with such a street any work, equipment or apparatus including, without prejudice to the generality of the foregoing, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part III of the 1991 Act;
- (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989(2); and
- (c) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

#### **Power to execute street works**

10.—(1) The undertaker may, for the purpose of exercising the powers conferred by article 9 above and the other provisions of this Order, enter upon any street in which the authorised transit system is or is to be laid and any street having a junction with such a street and may execute any works required for or incidental to the exercise of those powers including, without prejudice to the generality of the foregoing, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

(2) This article is subject to paragraph 3 of Schedule 11 to this Order.

#### **Stopping up of streets**

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts I and II of Schedule 4 to this Order to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of Parts I and II of that Schedule.

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(1) S.I. 1999/1026.

(2) 1989 c. 29.

(2) No street specified in columns (1) and (2) of Part I of Schedule 4 to this Order (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article until the new street to be substituted for it, and which is specified in relation to it by reference to one of the scheduled works in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use.

(3) No street specified in columns (1) to (3) of Part II of Schedule 4 to this Order (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) below is satisfied in relation to all the relevant land; and for this purpose “relevant land” means any land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) above is that—

- (a) the undertaker is in possession of the land; or
- (b) there is no right of access to the land from the street concerned; or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street has been stopped up under this article the undertaker may, without making any payment, appropriate and use for the purposes of its transit system undertaking so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961(3).

(7) This article is subject to paragraph 2 of Schedule 11 to this Order.

### **Temporary stopping up of streets**

**12.—**(1) The undertaker may, during and for the purposes of the execution of the authorised works, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3) below, prevent all persons from passing along the street.

(2) Without prejudice to the generality of paragraph (1) above, the undertaker may use any street stopped up under the powers of this article as a temporary working site.

(3) The undertaker shall provide at all times reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1) above, the undertaker may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 4 and in columns (1) and (2) of Schedule 5 to this Order to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of those Schedules.

(5) The undertaker shall not exercise the powers of this article—

- (a) in relation to any street specified as mentioned in paragraph (4) above, without first consulting the street authority; and
- (b) in relation to any other street, without the consent of the street authority, but such consent shall not be unreasonably withheld.

(6) This article is subject to paragraph 3 of Schedule 11 to this Order.

### **Access to works**

13. The undertaker may, for the purposes of the scheduled works, form and lay out means of access or improve existing means of access in such locations within the limits of deviation as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

### **Construction and maintenance of new or altered streets**

14.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) above do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any tramroad of the undertaker.

### **Construction of bridges and tunnels**

15. Any bridge or tunnel to be constructed under this Order for carrying a highway over or under a tramroad shall be constructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

### **Restoration of streets if street tramway discontinued**

16. If the undertaker permanently ceases to operate any of the authorised street tramways (“the discontinued tramway”), it shall as soon as reasonably practicable and unless otherwise agreed with the street authority—

- (a) remove from any street in which the discontinued tramway is laid the rails and any other works, equipment and apparatus which have become redundant; and
- (b) restore, to the reasonable satisfaction of the street authority, the portion of the street along which the discontinued tramway was laid regard being had to the condition of the street before the tramway was laid.

### **Agreements with street authorities**

17.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under a tramroad) under the powers conferred by this Order;
  - (b) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under a tramroad;
  - (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
  - (d) the execution in the street of any of the works referred to in article 10(1) above.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1) above—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question; and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

## Level crossings

**18.**—(1) The undertaker may construct the authorised transit system so as to carry it on the level across the highways specified in Parts I and II of Schedule 6 to this Order.

(2) The undertaker may provide, maintain and operate at or near any new level crossing such barriers or other protective equipment as the Secretary of State may in writing approve.

(3) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access shall be treated for the purposes of section 64(4) of the 1984 Act as having been placed as provided by that Act.

(4) Without prejudice to the generality of article 8 above, the undertaker may in the exercise of the powers of this article alter the level of any highway specified in Schedule 6 to this Order.

(5) The highway authority may enter into agreements with the undertaker with respect to the construction and maintenance of any new level crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(6) In this article—

“barrier” includes gate;

“new level crossing” means the place at which an authorised tramroad crosses a highway on the level under the powers conferred by this article; and

“protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

## *Incorporation of railways*

### Agreements with Railtrack

**19.**—(1) The undertaker and Railtrack may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Railtrack relating to any railway property.

(2) Where agreement is made for the transfer to the undertaker of any railway of Railtrack under paragraph (1) above, or the undertaker otherwise purchases any such railway or sufficient rights therein, the undertaker may adapt for use (including, where required, duplications of any existing rails), maintain, use and work that railway as part of the authorised transit system.

### As to local railway enactments

**20.**—(1) Section 13 (new level crossing at Fareham, Hampshire) of the British Railways (No. 2) Act 1984(4) shall cease to have effect on the transfer to the undertaker of Railtrack’s interest in the level crossing at Newgate Lane.

(2) The Portsmouth Branch Railway Act 1839(5) shall cease to have effect in its application to all those parts of the Gosport railway within the limits of deviation.

(3) Any other local enactment which makes provision in relation to any part of the Gosport railway or any other railway within the limits of deviation shall have effect subject to the provisions of this Order.

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(4) 1984 c. xx.

(5) 1839 c. xxviii.

(4) In this article “the Gosport railway” means the railway or former railway extending from the southern side of The Avenue in Fareham to Gosport.

### *The Tunnel*

#### **Additional powers for tunnel**

**21.**—(1) Without prejudice to the other powers conferred by this Order or otherwise available to it, the undertaker may within the tunnel area for the purposes of or in connection with the construction or maintenance of the tunnel and notwithstanding any interference thereby with any public or private rights—

- (a) alter, relocate or replace any tidal work,
- (b) carry out excavations and clearance, dredging, deepening, dumping and pumping operations,
- (c) use, appropriate and dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(6)) obtained by it in carrying out any such operations,
- (d) remove or relocate any mooring,
- (e) remove and, relocate any vessel or structure sunk, stranded or abandoned or moored or left (whether lawfully or not),
- (f) temporarily moor or anchor vessels and structures,
- (g) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of the harbour,
- (h) construct, place, maintain and remove temporary works and structures,

in such manner and to such extent as may appear to it to be necessary or convenient.

(2) Except in the case of urgency, the undertaker will use its reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel or structure affected by the proposal to exercise the powers of paragraph (1)(d) or (e) above before the exercise of that power.

#### **Prohibitions within tunnel area**

**22.**—(1) Notwithstanding anything in any other enactment or rule of law but subject to the provisions of this article and paragraph 10 of Schedule 7, the Queen’s Harbour Master shall, at the request of the undertaker and at the undertakers' expense, at any time when it appears to the undertaker necessary or convenient for the purposes of the construction or maintenance of the tunnel, by direction close the whole or any part of the tunnel area to navigation by all vessels or by any class of vessel.

(2) Subject to paragraph (3)—

- (a) a direction under paragraph (1) above shall specify the duration of the closure, the part of the harbour affected and the vessels to which it applies; and
- (b) the written consent of the Secretary of State shall be required to the giving of any direction which prohibits, or has the effect of prohibiting, the passage of any vessel through the tunnel area—
  - (i) whether in combination with any other direction already given (other than any which are abandoned) or not, at any time other than during six 29 hour periods each commencing at 2300; or

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(6) 1995 c. 21.

- (ii) after 0700, during any of those six 29 hour periods, for more than three periods each of which shall be no longer than three hours and shall be separated from any other such period by an interval of no less than three hours.

(3) The duration of a closure under this article may be extended by the Queen's Harbour Master until he is satisfied that any navigation channel to be opened following the closure has adequate depth and is free of obstruction.

(4) A person may not, without the written consent of the undertaker, within any part of the tunnel area, during a period when it is closed to navigation under this article—

- (a) navigate any vessel or cause or permit a vessel to be moored if the vessel concerned is subject to the closure,
- (b) lay down or place any mooring or apparatus, including mains, sewers, drains and cables, or
- (c) undertake or cause or permit any other operation or activity,

unless he does so in compliance with any direction which the Queen's Harbour Master has given either in an emergency or for military operational requirements which the Queen's Harbour Master is satisfied it is not reasonably practicable to fulfil at any other time.

(5) Any person who contravenes the requirements of paragraph (4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Except in an emergency, the Queen's Harbour Master shall at the undertaker's expense publish notice of any direction given under paragraph (1) in a newspaper circulating in the city of Portsmouth not less than 14 days before the direction is to take effect.

(7) In making a request pursuant to paragraph (1), the undertaker shall ensure that no more of the tunnel area is closed to navigation at any time by all vessels, or by any class of vessel, than is at that time necessary in the circumstances.

(8) If complete closure of the tunnel area to all vessels or to any particular class of vessels is necessary at any time, the undertaker shall take all reasonable steps to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the tunnel area.

(9) Without prejudice to the provisions of article 36 (application of Part I of the Compulsory Purchase Act 1965) neither the undertaker nor the Queen's Harbour Master shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the tunnel area under this article.

(10) A direction given under this article may be varied or revoked by a subsequent direction given under this article.

### **Protection of tunnel, etc.**

**23.—**(1) A person may not without the consent in writing of the undertaker (which may be given subject to conditions)—

- (a) use, for the purpose of landing or embarking persons or landing or loading goods from or into any vessel, the tunnel, any of the tunnel units, any tunnel approach works or any work constructed for the purposes of or in connection with the tunnel pursuant to this Order;
- (b) interfere with the tunnel, any of the tunnel units, any tunnel approach works or any backfilling or scour protection provided for the purposes of or in connection with the tunnel;
- (c) remove, move or otherwise interfere with any such work or any machinery, apparatus, tools or other things in use or intended for use in constructing the tunnel; or
- (d) moor any vessel within 50 metres (measured horizontally) of the tunnel.

(2) A person who without reasonable excuse contravenes paragraph (1) above, or fails to comply with any conditions attached to a consent given by the undertaker under that paragraph, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) In this paragraph—

“tunnel approach works” means works for providing access to the tunnel on either side of the river; and

“tunnel units” means sections of concrete, steel or other material (or combination of materials) designed to be attached together so as to constitute the framework of the tunnel.

#### **As to Portsmouth to Gosport ferry, etc.**

**24.**—(1) Subject to paragraphs (2) and (3) below and except as may otherwise be agreed in writing between the undertaker and the harbour company, if the undertaker in exercising its powers under article 35, article 42 or any other provision of this Order, takes possession of the Portsea landing-place or the site of the Portsea landing-place, it shall assume and may exercise, until such time as it may by agreement with the harbour company permanently reinstate or replace the Portsea landing-place to the reasonable satisfaction of the harbour company, all of the powers conferred upon the harbour company by the Portsea Harbour Company Act 1984(7) in relation to the landing-place and shall be subject to all the restrictions, liabilities and obligations in relation to the landing-place to which the harbour company is subject and shall perform the functions of the harbour company under the Act.

(2) Part I of Schedule 2 (protection of British Railways Board and Sealink U.K. Limited) to the Portsea Harbour Company Act 1984 shall not apply during any period during which the undertaker has assumed responsibility for the Portsea landing-place pursuant to paragraph (1) or otherwise in relation to anything done under this Order.

(3) Notwithstanding anything in the Portsea Harbour Company Act 1984 or any other enactment or rule of law, the undertaker may, during any period when it has assumed responsibility for the Portsea landing-place pursuant to paragraph (1) above and upon giving not less than 28 days' notice in a newspaper circulating in the area (which notice may be given in advance of the undertaker assuming responsibility for it), temporarily close the whole or any part of the Portsea landing-place for the purposes of or in connection with the construction of the authorised works.

(4) Section 6 (limits of jurisdiction) of the Portsea Harbour Company Act 1984 shall be amended as follows—

- (a) in section 2 (interpretation), the definition of “the signed plan” shall be omitted;
- (b) in subsection (1) of section 6 (limits of jurisdiction), the words “the area which is shown coloured pink on the signed plan and which is” shall be omitted and, at the end, there shall be inserted the words “but excluding any part of that area within 15 metres of any part of Work No 8A of the South Hampshire Rapid Transit Order 2001 as the same is constructed.”

(5) Schedule 2 (protective provisions) of the Portsea Harbour Company Act 1984 shall be amended by the insertion at the end of the following new Part—

### **“PART III**

#### **FOR PROTECTION OF TUNNEL**

Nothing in this Act shall authorise the harbour company to do anything, or permit anything to be done, to or affecting the tunnel authorised by the South Hampshire Rapid Transit Order 2001 or any

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(7) 1984 c. xviii.

land vested in the undertaker (as defined in that Order) in connection with that tunnel, without the consent in writing of the undertaker.”.

(6) In section 48 (management of ferry works and lands, etc.) of the Hampshire Act 1983<sup>(8)</sup>, for the words “the ferry service” there shall be substituted the words “the provision of passenger transport services across Portsmouth harbour”.

(7) Without prejudice to any other power available to it, the undertaker may operate or secure the operation of ferry services across the harbour—

- (a) in connection with the construction of the tunnel, in so far as the construction or proposed construction of the tunnel adversely affects the availability of ferry services across the harbour; and
- (b) in connection with the operation of the tunnel, at any time when the tunnel is not available for the operation of transit services or is subject to limitations upon the operation of transit services.

(8) The undertaker may do anything which in its opinion is necessary or convenient for the purposes of the ferry services across the harbour and, without prejudice to the generality of the foregoing, may demand, take and recover or waive charges for the use of any such service.

(9) Notwithstanding anything in section 16 (appropriation of part of landing place) of the Portsea Harbour Company Act 1984 or any other enactment but subject to payment of any charges which are ordinarily applicable, the undertaker may use the Portsea landing-place and any other public landing stage or structure for the purposes of any ferry service provided under paragraph (7).

(10) Nothing in paragraph (7) above shall authorise the undertaker to provide a ferry service—

- (a) from the Portsea landing-place, or any other public landing stage or structure or any temporary replacement for any such facility, to the exclusion of any public scheduled ferry service across the harbour provided by any person at the time of the making of this Order or which, thereafter, has been let to a person under section 49 of the Hampshire Act 1983 (power to establish or assist a ferry service, etc.); or
- (b) unless and until any person providing such a service has ceased to provide a service which is reasonably sufficient or the undertaking of such person has been acquired by agreement by a local authority either under the Ferries (Acquisition by Local Authorities) Act 1919<sup>(9)</sup> or otherwise.

(11) In this article “the harbour company” and “the Portsea landing-place” mean the harbour company and the landing-place as respectively defined in the Portsea Harbour Company Act 1984.

### **No apparatus in tunnel without consent**

**25.** Notwithstanding anything contained in any other enactment, no person shall enter upon, break up or interfere with the tunnel or any part thereof for the purpose of placing or doing anything in or in relation to any sewer, drain, main, pipe, wire or other apparatus or executing any work except with the written consent of the undertaker and in accordance with such terms and conditions as the undertaker may determine.

### **Protection of navigation**

**26.** Schedule 7 shall have effect.

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<sup>(8)</sup> 1983 c. v.

<sup>(9)</sup> 1919 c. 75.

*Supplemental*

**Attachment of equipment to buildings for purposes of transit system**

27.—(1) Subject to the following provisions of this article, the undertaker may affix to any building, other than an excepted building—

- (a) any brackets, cables, wires, insulators and other apparatus required in connection with the authorised transit 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 transit system.

(2) The undertaker 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.

(3) Where—

- (a) the undertaker 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.

(4) Where, in the opinion of the undertaker, 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.

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

- (a) any owner for the time being of the building may serve on the undertaker not less than 28 days' notice requiring the undertaker at its own expense temporarily to remove the apparatus during any reconstruction or repair of the building if such removal is reasonably necessary for that purpose; and
- (b) the undertaker shall have the right as against any person having an interest in the building to maintain the apparatus.

(6) The undertaker 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 (5)(b) above; 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 Land Compensation Act 1961(10).

(7) In this article—

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

“excepted building” means any building existing at the time of this Order at—

26 and 33 Hartland's Road, 158 Redlands Lane and 115/117, 131, 147, 149, 153, 183, 192 and 203 West Street;

3 and 14 Carlyle Road, 5 Ford Road, 9 Forton Road and 21 St Ann's Crescent, Gosport; and

1 to 5 and 61 Queen Street, Portsmouth; and

“relevant owner”—

- (a) in relation to a building occupied under a lease or tenancy having an unexpired term exceeding 5 years, means the occupier of the building; and
- (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.

### **Discharge of water**

**28.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction 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 limits of deviation shown on the works plans 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) The undertaker 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) The undertaker 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) The undertaker 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) The undertaker 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<sup>(11)</sup>.

(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<sup>(12)</sup>;
- (b) “watercourse” includes all 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**

**29.**—(1) Subject to the following provisions of this article, the undertaker may, at its own expense and from time to time, carry out such safeguarding works to any building lying within the limits of deviation or on the lands numbered 16/12 and 16/13 on the land plans as the undertaker considers to be necessary or expedient.

(2) Safeguarding works may be carried out—

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<sup>(11)</sup> 1991 c. 57.

<sup>(12)</sup> 1964 c. 40.

- (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 the undertaker may enter and survey any building falling within paragraph (1) above and any land belonging to it.

(4) For the purpose of carrying out safeguarding works under this article to a building the undertaker may (subject to paragraphs (5) and (6) below)—

- (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) above to carry out safeguarding works to a building,
- (b) a right under paragraph (3) above to enter a building,
- (c) a right under paragraph (4)(a) above to enter a building or land, or
- (d) a right under paragraph (4)(b) above to enter land,

the undertaker 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) above, specifying the safeguarding works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d) above, 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 71 below.

(7) The undertaker 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,

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

(9) Without prejudice to article 70, nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) above shall be determined, in case of dispute, under Part I of the Land Compensation Act 1961(13).

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection; and

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(13) 1961 c. 33.

- (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 transit system or to prevent or minimise the risk of such operation being disrupted.

### **Power to construct temporary transit systems**

**30.**—(1) The undertaker 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 or near to that street a temporary transit system in lieu of the authorised street tramway.

(2) The powers conferred by this article may only be exercised with the consent of the highway authority but such consent shall not be unreasonably withheld.

(3) The provisions of article 53 below shall apply in relation to temporary transit systems laid under this article as they apply in relation to authorised street tramways.

### **Planning permission: supplementary matters**

**31.** Planning permission which is deemed by virtue of a direction under section 90(2A) of the Town and Country Planning Act 1990<sup>(14)</sup> 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 the Town and Country Planning Act 1990.

### **Power to survey and investigate land**

**32.**—(1) The undertaker may for the purposes of this Order—

- (a) survey or investigate any land within the limits of deviation shown on the works plans or in any street along which any authorised street tramway is authorised to be laid;
- (b) without prejudice to the generality of sub-paragraph (a) above, make trial holes in such positions as the undertaker 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) above, carry out archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d) above.

(2) No land may be entered, or equipment placed or left on or removed from the land, under paragraph (1) above, unless at least 7 days' notice has been served on every owner and occupier of the land.

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(14) 1990 c. 8.

- (3) Any person entering land under this article on behalf of the undertaker—
- (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.
- (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) The undertaker shall make 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 Land Compensation Act 1961<sup>(15)</sup>.
- (6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979<sup>(16)</sup>.

### **Mode of construction and operation of transit system**

- 33.**—(1) The authorised transit 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) Except with the consent of the street authority (which shall not be unreasonably withheld) the authorised street tramways (other than any reserved track tramways) shall be so constructed and maintained as to ensure that the uppermost surface of the rails is level with the surrounding surfaces of the street in which they are laid.

### **Obstruction of construction of transit system**

- 34.** 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.

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<sup>(15)</sup> 1961 c. 33.

<sup>(16)</sup> 1979 c. 46.