
STATUTORY INSTRUMENTS

2001 No. 3627

The South Hampshire Rapid Transit Order 2001

PART I PRELIMINARY

Citation and commencement

1. This Order may be cited as the South Hampshire Rapid Transit Order 2001 and shall come into force on 24th July 2001.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

“the 1965 Act” means the Compulsory Purchase Act 1965⁽¹⁾;

“the 1984 Act” means the Road Traffic Regulation Act 1984⁽²⁾;

“the 1991 Act” means the New Roads and Street Works Act 1991⁽³⁾;

“authorised guided busway” means the authorised guided busway forming part of Work No 8;

“authorised street tramway” means any street tramway authorised by this Order;

“authorised tramroad” means any tramroad authorised by this Order;

“authorised transit system” means the transit system (consisting of the authorised guided busway, the authorised street tramways and the authorised tramroads) authorised by this Order or any part of that system;

“authorised works” means the scheduled works and any other works authorised by this Order;

“the book of reference” means the book of reference (incorporating a schedule of subsoil interests) certified by the Secretary of State as the book of reference for the purposes of this Order;

“carriageway” has the same meaning as in the Highways Act 1980⁽⁴⁾;

“cycletrack” means a way over which the public have a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988)⁽⁵⁾ with a right of way on foot;

“guided busway” means a way provided for the use of vehicles which are constructed or adapted to carry more than eight passengers for hire or reward and use a mode prescribed in article 2(e), (f), (g) or (h) of the Transport and Works (Guided Transport Modes) Order 1992⁽⁶⁾;

(1) 1965 c. 56.
(2) 1984 c. 27.
(3) 1991 c. 22.
(4) 1980 c. 66.
(5) 1988 c. 52.
(6) S.I. 1992/3231, amended by S.I. 1997/1951.

“the harbour” means the whole of Portsmouth harbour below the level of mean high-water springs;

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

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

“the limits of deviation” means the limits of lateral deviation for the scheduled works mentioned in article 6(1)(a) and (2);

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

“mooring” means any buoy, pile, pontoon, chain or other apparatus used for the mooring of vessels;

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

“parking place” has the same meaning as in section 32 of the 1984 Act;

“Queen’s Harbour Master” means the person appointed to be Queen’s Harbour Master of the Dockyard Port of Portsmouth under the Dockyard Ports Regulation Act 1865(7);

“Railtrack” means Railtrack PLC and includes any person who derives title to any property from Railtrack PLC and holds that property for railway purposes;

“rapid transit vehicle” means a tramcar or a vehicle guided by means of the guidance system of a guided busway;

“reserved track tramway” means any section of a street tramway laid along part of a street which vehicles other than tramcars are deterred or prevented from using;

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

“the sections” means the sections certified by the Secretary of State as the sections for the purposes of this Order;

“street” includes part of a street;

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

“street tramway” means any part of a transit system which is laid along a street—

- (a) whether or not the section of the street in which its rails are laid may be used by other traffic, or
- (b) whether the uppermost surface of the rails is level with, or raised above, the surrounding surfaces of the street;

“the telecommunications code” means Schedule 2 to the Telecommunications Act 1984(8);

“tidal work” means so much of any work as is on, over or under tidal waters or tidal land below the level of mean high-water springs;

“tramcar” means any vehicle (whether or not used for the carriage of passengers) carried on flanged wheels along the rails of a street tramway or tramroad;

“tramroad” means any part of a transit system which is not a street tramway or a guided busway;

“transit services” means passenger services utilising the authorised transit system;

(7) 1865 c. 125 (28 & 29 Vict).

(8) 1984 c. 12.

“transit system” means a system of transport consisting of a guided busway, a street tramway or a tramroad or any combination of those modes of transport;

“the tribunal” means the Lands Tribunal;

“the tunnel” means Work No. 8A;

“tunnel area” means so much of the land lying within the limits of deviation and the limits of land to be used shown on the works plans as is situated in the harbour;

“the undertaker” means Hampshire County Council and Portsmouth City Council acting jointly or, in the case of any provision contained in Part III of this Order, jointly or severally;

“vehicle” includes mobile traction unit; and

“the works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in or on land or in the air-space over its surface.

(3) Unless the context otherwise requires, any reference in this Order to a work identified by the number of the work shall be construed as a reference to the work of that number authorised by this Order.

(4) References in this Order to points identified by letters, with or without numbers, shall be construed as references to the points so marked on the works plans.

(5) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, direction and length, and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

Application of enactments relating to railways

3.—(1) The provisions of the Regulation of Railways Acts 1840 to 1893 shall not apply in relation to the authorised transit system.

(2) The provisions of the Highway (Railway Crossings) Act 1839⁽⁹⁾ shall not apply in relation to the authorised transit system.

(3) Nothing in this article shall be taken as affecting the application to the authorised tramroads of sections 32 to 34 of the Offences Against the Person Act 1861⁽¹⁰⁾.

Application of 1991 Act

4.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part III of the 1991 Act (street works) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works), or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the Highways Act 1980⁽¹¹⁾ (dual carriageways and roundabouts).

⁽⁹⁾ 1839 c. 45.

⁽¹⁰⁾ 1861 c. 100.

⁽¹¹⁾ 1980 c. 66.

(2) Section 56 (directions as to timing) and section 58 (restrictions following substantial road works) of the 1991 Act shall not apply in relation to any works executed under the power of this Order.

(3) The provisions of the 1991 Act mentioned in paragraph (4) below which together with other provisions of that Act apply in relation to the execution of street works and any regulations made or code of practice issued or approved under those provisions, shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the undertaker under the powers conferred by this Order whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

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

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

(5) Nothing in article 14 of this Order shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the undertaker shall not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act; or
- (b) have effect in relation to street works with regard to which the provisions of Part III of the 1991 Act apply.

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⁽¹²⁾ 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—

(12) S.I. 1999/1026.

- (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⁽¹³⁾; 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.

(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⁽¹⁴⁾.

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

⁽¹³⁾ 1989 c. 29.

⁽¹⁴⁾ 1961 c. 33.

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⁽¹⁵⁾ 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⁽¹⁶⁾ 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.

(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⁽¹⁷⁾) 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),

⁽¹⁵⁾ 1984 c. xx.

⁽¹⁶⁾ 1839 c. xxviii.

⁽¹⁷⁾ 1995 c. 21.

- (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
 - (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⁽¹⁸⁾ in relation to the landing-place and shall be subject to all the restrictions, liabilities and obligations in relation to the landing-place

(18) 1984 c. xviii.

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 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⁽¹⁹⁾, 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

(19) 1983 c. v.

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⁽²⁰⁾ 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.

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,

(20) 1919 c. 75.

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⁽²¹⁾.

(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.

(21) 1961 c. 33.

(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⁽²²⁾.

(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⁽²³⁾;
- (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—

- (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,

(22) 1991 c. 57.

(23) 1964 c. 40.

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(24).

(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 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.

(24) 1961 c. 33.

(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⁽²⁵⁾ 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.

(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⁽²⁶⁾.

(6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979⁽²⁷⁾.

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.

⁽²⁵⁾ 1990 c. 8.

⁽²⁶⁾ 1961 c. 33.

⁽²⁷⁾ 1979 c. 46.

(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.

PART III

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

35.—(1) The undertaker may acquire compulsorily—

- (a) so much of the land shown on the land plans within the limits of deviation for the scheduled works shown on the works plans and described in the book of reference as may be required for the purposes of the authorised works, and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order (being land shown on the land plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes connected with, or ancillary to, its transit system undertaking.

(2) This article is subject to article 40(2) and article 41(8) below.

(3) The undertaker shall not under the powers of this Order acquire compulsorily any interest in the land numbered 1/1, 1/14, 1/15, 1/16, 1/18, 1/19, 1/20, 1/21, 1/27, 8/9, 8/10, 8/11, 11/7, 12/3, 12/4, 13/13 and 15/10 in the book of reference.

Application of Part I of Compulsory Purchase Act 1965

36.—(1) Part I of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(28) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect as if—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and

(28) 1981 c. 67.

- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—
 - (i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month; or
 - (ii) in any other case, a reference to notice of 3 months.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

37.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽²⁹⁾ shall apply as if this Order were a compulsory purchase order.

(2) In its application by virtue of paragraph (1) above, the Compulsory Purchase (Vesting Declarations) Act 1981 shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 below with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) below in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in the London Gazette and in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)”, and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) he holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in the London Gazette or in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the Compulsory Purchase Act 1965 shall be construed as references to that Act as applied to the acquisition of land under article 36 above.

Powers to acquire new rights

38.—(1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 35 above as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(29) 1981 c. 66.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 8 to this Order), where the undertaker acquires a right over land under paragraph (1) above the undertaker shall not be required to acquire a greater interest in it.

(3) Schedule 8 to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

Powers to acquire subsoil only

39.—(1) The undertaker may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 35 above as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of the subsoil of land under paragraph (1) above the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) above shall not prevent article 44 below from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Rights under or over streets

40.—(1) The undertaker may enter upon and appropriate so much of the surface, subsoil of, or air-space over, any street shown on the land plans and described in the book of reference as may be required for the purposes of the authorised works and may use the surface, subsoil and air-space for those purposes or any other purpose connected with or ancillary to its transit system undertaking.

(2) The power under paragraph (1) above may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street and, except in relation to a street which is subject to stopping up pursuant to article 11 above, the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the street.

(3) Any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) above is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(4) Paragraph (2) above shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in or on a street which forms part of a building fronting on to the street.

Temporary possession of land

Temporary use of land for construction of works

41.—(1) The undertaker may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 9 to this Order for the purpose specified in relation to that land in columns (3) and (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of 2 years beginning with the date of completion of the works specified in relation to that land in column (4) of Schedule 9 to this Order.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961⁽³⁰⁾.

(7) Without prejudice to article 70 below, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5) above.

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1) above except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 38 above; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 39 above.

(9) Where the undertaker takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article “building” includes structure or any other erection.

Temporary use of land for maintenance of works

42.—(1) At any time during the maintenance period relating to any of the scheduled works, the undertaker may—

- (a) enter upon and take temporary possession of any land within the limits of deviation and lying within 20 metres from that work if such possession is reasonably required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) above shall not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.

(30) 1961 c. 33.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961.

(8) Without prejudice to article 70 below, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6) above.

(9) Where the undertaker takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) In this article—

- (a) “the maintenance period”, in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for use;
- (b) “building” includes structure or any other erection; and
- (c) any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

Compensation

Disregard of certain interests and improvements

43.—(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land under this Order, the tribunal shall not take into account—

- (a) any interest in land, or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) above “relevant land” means the land acquired from the person concerned or any other land with which he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Acquisition of part of certain properties

44.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 36 above) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or factory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat and stating that he is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice, but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, and
- (b) that the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay to the owner compensation for any

loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or factory or of land consisting of a house with a park or garden, the undertaker shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of private rights of way

45.—(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

(a) as from the acquisition of the land by the undertaker, whether compulsorily or by agreement, or

(b) on the entry on the land by the undertaker under section 11(1) of the 1965 Act, whichever is sooner.

(2) All private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the works plans, is required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by the undertaker.

(3) All private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) 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⁽³¹⁾.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990⁽³²⁾ (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 11 to this Order applies.

Time limit for exercise of powers of acquisition

46.—(1) No notice to treat shall be served under Part I of the 1965 Act, as applied to the acquisition of land under article 36 above, after the end of the period of 5 years beginning with the day on which this Order comes into force.

(2) The power conferred by article 41 above to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1) above; but this paragraph shall not prevent the undertaker remaining in possession of land in accordance with article 41 above after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART IV

OPERATION OF TRANSIT SYSTEM

Power to operate and use transit system

47.—(1) The undertaker may operate and use the authorised transit system and the other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

⁽³¹⁾ 1961 c. 33.

⁽³²⁾ 1990 c. 8.

(2) Subject to paragraph (4) below and to article 59 below, the undertaker shall, for the purpose of operating the transit system, have the exclusive right—

- (a) to use the rails or other guidance, foundations, cables, masts, overhead wires and other apparatus used for the operation of the transit system; and
- (b) to occupy any part of the street in which that apparatus is situated.

(3) Any person who, without the consent of the undertaker or other reasonable excuse, uses the apparatus mentioned in paragraph (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(4) Nothing in this article shall restrict the exercise of any public right of way over any part of a street in which apparatus is situated in pursuance of paragraph (2) above except to the extent that the exercise of the right is constrained by the presence of the apparatus.

Maintenance of approved works, etc.

48.—(1) Where pursuant to regulations made under section 41 of the Transport and Works Act 1992 (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the authorised transit system, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the authorised transit system.

(2) If without reasonable cause the provisions of paragraph (1) above are contravened, the undertaker shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

Power to charge fares

49. The undertaker may demand, take and recover or waive such charges for carrying passengers or goods on the authorised transit system, or for any other services or facilities provided in connection with the operation of the authorised transit system, as it thinks fit.

Disapplication of duties respecting provision of transport services

50. Section 63(7) of the Transport Act 1985⁽³³⁾ shall not apply to the undertaker in respect of transit services procured by it under this Order, and any service subsidy agreement relating to the operation of a transit service shall be excluded from section 89(1) of that Act.

Concessionary travel

51. Sections 93 to 102 and 112 of the Transport Act 1985 (which make provision for travel concession schemes) shall apply to transit services, notwithstanding that such services may not be eligible services as defined in section 94(4) of that Act.

Removal of obstructions

52.—(1) If any obstruction is caused to rapid transit vehicles using the authorised transit system by a vehicle waiting, loading, unloading or breaking down on any part of the transit system, the person in charge of the vehicle shall forthwith remove it; and if he fails to do so the undertaker

(33) 1985 c. 67; section 63 was amended by the Transport Act 2000 (c. 38), Schedule 11.

may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the vehicle was put or left so as to become an obstruction to rapid transit vehicles; or
- (b) any person who was the owner of the vehicle at that time unless he shows that he was not, at that time, concerned in or aware of the vehicle being so put or left.

(2) If any obstruction is caused to rapid transit vehicles using the authorised transit system by a load falling on the transit system from a vehicle, the person in charge of the vehicle shall forthwith remove the load from the transit system; and if he fails to do so, the undertaker may take all reasonable steps to remove the load and may recover the expenses reasonably incurred in doing so from—

- (a) any person who was in charge of the vehicle at the time when the load fell from it; or
- (b) any person who was the owner of the vehicle at that time unless he shows that he was not concerned in, or aware of, the vehicle being in the place at which the load fell from it.

(3) For the purposes of this article the owner of a vehicle shall be taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of the vehicle at any time, it shall be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicles Excise and Registration Act 1994⁽³⁴⁾.

Traffic signs

53.—(1) The undertaker may, for the purposes of, or in connection with the operation of, the authorised transit system, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State on any street in which the authorised transit system is laid or which gives access to such a street.

(2) The undertaker—

- (a) shall consult with the traffic authority as to the placing of signs; and
- (b) unless the traffic authority is unwilling to do so and subject to any directions given under section 65 of the 1984 Act, shall enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs shall include a power to give directions to the undertaker as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) above shall be exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on any street in which the authorised transit system is laid or which gives access to such a street shall consult with the undertaker as to the placing of any traffic sign which would affect the operation of the authorised transit system.

(5) Rapid transit vehicles shall be taken to be public service vehicles for the purposes of section 122(2)(c) of the 1984 Act.

(6) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

⁽³⁴⁾ 1994 c. 22.

Traffic regulation

54.—(1) Subject to the provisions of this article, the undertaker may, for the purposes of the authorised transit system, at any time prior to the expiry of 12 months from the opening of the system for use and with the consent of the traffic authority in whose area the road is situated—

- (a) prohibit or restrict the waiting or the loading or unloading of vehicles in the manner specified in Part I of Schedule 10 to this Order on those roads specified in column (2) and along the lengths and between the points specified in columns (3) and (4) of that Part of that Schedule;
 - (b) authorise the use as a parking place in the manner specified in Part II of Schedule 10 to this Order of those roads specified in column (2) and along the lengths and between the points specified in column (3) and (4) of that Part of that Schedule;
 - (c) make provision as to the direction of vehicular traffic in the manner specified in Part III of Schedule 10 to this Order on the roads specified in column (2) and as respects direction to the extent specified in column (3) of that Part of that Schedule;
 - (d) prohibit vehicular access in the manner specified in Part IV of Schedule 10 to this Order on those roads specified in column (2) and at the points and as respects direction to the extent specified in column (3) of that Part of that Schedule;
 - (e) revoke any traffic regulation order in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.
- (2) The undertaker shall not exercise the powers of this article unless it has—
- (a) given not less than 12 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
 - (b) advertised its intention in such manner as the traffic authority may within 28 days of its receipt of notice of the undertakers' intention specify in writing.
- (3) Any prohibition, restriction or other provision made by the undertaker under sub-paragraph (1)(a), (c), (d) or (e) above shall have effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify savings (in addition to those mentioned in Schedule 10) to which the prohibition, restriction or other provision is subject.
- (4) Any authorisation of a parking place made by the undertaker under sub-paragraph (1)(b) above shall have effect as if duly made by the local authority as an order under section 32 of the 1984 Act.

Power to lop trees overhanging transit system

55.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised transit system, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the transit system or any apparatus used for the purposes of the transit system; or
 - (b) from constituting a danger to passengers or other persons using the transit system.
- (2) In exercising the powers in paragraph (1) above, the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.
- (3) Nothing in this article shall be taken to affect the application of any tree preservation order made under section 198 of the Town and Country Planning Act 1990⁽³⁵⁾.

(35) 1990 c. 8.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961(36).

Trespass on tramroads and busways

56.—(1) Any person who—

- (a) trespasses on any authorised tramroad or any part of the authorised guided busway which is not in a public highway, or
- (b) trespasses upon any land of the undertaker in dangerous proximity to the authorised tramroads or any part of the authorised guided busway which is not in a public highway or to any electrical or other apparatus used for or in connection with the operation of the authorised tramroads,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person shall be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass upon the tramroads was clearly exhibited and maintained at the station or other stopping place on the authorised transit system nearest the place where the offence is alleged to have been committed.

Power to make byelaws

57.—(1) The undertaker may make byelaws regulating the use and operation of, and travel on, the authorised transit system, the maintenance of order on the authorised transit system and on transit system premises or other facilities provided in connection with the authorised transit system and the conduct of all persons, including employees of the undertaker, while on the authorised transit system or on transit system premises.

(2) Without prejudice to the generality of paragraph (1) above, byelaws under this article may make provision—

- (a) with respect to tickets issued for travel on the authorised transit system, the payment of fares and charges and the evasion of payment of fares and charges;
- (b) with respect to interference with, or obstruction of, the operation of the authorised transit system or other facilities provided in connection with the authorised transit system;
- (c) with respect to access to and the carriage, use or consumption of anything on transit system premises;
- (d) with respect to the prevention of nuisances on transit system premises;
- (e) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within transit system premises;
- (f) for the safe custody and re-delivery or disposal of any property accidentally left on transit system premises and for fixing the charges made in respect of any such property; and
- (g) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the authorised transit system or on transit system premises.

(3) In paragraphs (1) and (2) above references to “transit system premises” are references to premises of the undertaker used for or in connection with the operation of the authorised transit system including the tunnel, any depot or building and any rapid transit vehicle.

(4) Byelaws under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (4) above, if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public, or hindrance to the undertaker in the operation of the transit system, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.

(6) Byelaws under this article shall not come into operation until they have been confirmed by the Secretary of State.

(7) At least 28 days before applying for any byelaws to be confirmed under this article, the undertaker shall publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the time during which a copy of the byelaws will be open to public inspection; and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(8) For at least 24 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws shall be kept at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment.

(9) The undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker may determine.

(10) The Secretary of State may confirm with or without modification, or may refuse to confirm, any of the byelaws submitted under this article for confirmation and, as regards any byelaws so confirmed, may fix a date on which the byelaws shall come into operation; and if no date is so fixed the byelaws shall come into operation after the expiry of 28 days after the date on which they were confirmed.

(11) The Secretary of State may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as he may consider appropriate for the purpose of defraying any administrative expenses incurred by him in connection therewith.

(12) A copy of the byelaws when confirmed shall be printed and deposited at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment, and the undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker shall determine.

(13) The production of a printed copy of byelaws confirmed under this article on which is endorsed a certificate purporting to be signed by a person duly authorised by the undertaker stating—

- (a) that the byelaws were made by the undertaker,
- (b) that the copy is a true copy of the byelaws,
- (c) that on a specified date the byelaws were confirmed by the Secretary of State, and
- (d) the date when the byelaws came into operation,

shall be prima facie evidence of the facts stated in the certificate.

Power to contract for police services

58.—(1) Agreements may be made—

- (a) between the undertaker and the chief officer of police of any police force and the police authority, or
- (b) between the undertaker and the Strategic Rail Authority,

for making available to the undertaker for the purposes of the operation of its transit system undertaking the services of members of the police force or, as the case may be, members of the British Transport Police Force on such terms as to payment or otherwise, and subject to such conditions, as the parties to them think fit.

(2) In this article—

- (a) “chief officer of police”, “police authority” and “police force” have the same meaning as in the Police Act 1964⁽³⁷⁾; and
- (b) “the British Transport Police Force” means the force organised under the British Transport Police Scheme 1963⁽³⁸⁾.

Powers of disposal, agreements for operation, etc.

59.—(1) The undertaker may, in the case of the authorised transit system with the consent of the Secretary of State, sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the authorised works and any land held in connection therewith or the right to operate the authorised works under this Order.

(2) Without prejudice to the generality of paragraph (1) above, the undertaker may enter into and carry into effect agreements with respect to any of the following matters, namely, the construction, maintenance, use and operation of the authorised works, or any part or parts of them, by any other person, and other matters incidental or subsidiary thereto or consequential thereon, and the defraying of, or the making of contributions towards, the cost of the matters aforesaid by the undertaker or any other person.

(3) Any agreement under subsection (2) above may provide for the exercise of the powers of the undertaker in respect of the authorised works or any part thereof, and for the transfer to any person of the authorised works or any part thereof together with the rights and obligations of the undertaker in relation thereto.

(4) The exercise of the powers of any enactment by any person in pursuance of any sale, lease, charge or disposal under paragraph (1) above, or any agreement under paragraph (2) above, shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the undertaker.

Application of landlord and tenant law

60.—(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised transit system or the right to operate the same, and any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised transit system, or any part of it, so far as any such agreement 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.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

⁽³⁷⁾ 1964 c. 48.

⁽³⁸⁾ The British Transport Police Scheme 1963 is contained in the Schedule to the British Transport Police Force Scheme 1963 (Approval) Order 1964 (S.I. 1964/1456). The scheme was subsequently amended by the British Transport Police Force Scheme 1963 (Amendment) Order 1992 (S.I. 1992/364) and continues in force, as if made under section 132 of the Railways Act 1993 (c. 43), by virtue of paragraph 3(2) of Schedule 10 to that Act. The scheme was subsequently further amended by the British Transport Police Force Scheme 1963 (Amendment) Order 1994 (S.I. 1994/609) and the text of the scheme, as amended, is set out in the Schedule to that Order.

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Tramcars deemed to be public service vehicles

61.—(1) On such day as may be appointed under paragraph (2) below, regulations made, or having effect as if made, under sections 24, 25 or 60(1)(j) or (k) of the Public Passenger Vehicles Act 1981⁽³⁹⁾ shall have effect as if the tramcars used on the authorised transit system were public service vehicles used in the provision of a local service within the meaning of the Transport Act 1985.

- (a) (2) (a) The undertaker may by resolution appoint a day for the purpose of any regulation mentioned in paragraph (1) above, the day so appointed being fixed in accordance with sub-paragraph (b) below.
- (b) The undertaker shall publish in a newspaper circulating in its area, notice—
 - (i) of the passing of any such resolution and of the day fixed thereby; and
 - (ii) of the general effect of the enactments for the purposes of which the day has been fixed;
 and the day so fixed shall not be earlier than the expiration of 28 days from the date of the publication of the notice.
- (c) A photostatic or other reproduction certified by the secretary of the undertaker to be a true reproduction of a page, or part of a page, of any newspaper bearing the date of its publication and containing the notice mentioned in sub-paragraph (b) above shall be evidence of the publication of the notice and of the date of publication.

Substitute road services

62.—(1) The undertaker may provide or secure the provision by other persons of services for the carriage of passengers by road (“substitute services”) where the transit system has been temporarily interrupted, curtailed or discontinued.

(2) The route, frequency and stopping places of any substitute service need not correspond with the route of the interrupted, curtailed or discontinued service.

(3) Section 6 of the Transport Act 1985⁽⁴⁰⁾ shall not apply to any substitute services.

PART V

PROTECTIVE PROVISIONS

Statutory undertakers, etc.

63. The provisions of Schedule 11 to this Order shall have effect.

⁽³⁹⁾ 1981 c. 14.

⁽⁴⁰⁾ 1985 c. 67.

Protection of railway interests

64. The provisions of Schedule 12 to this Order shall have effect.

Minerals

65. Nothing in this Order shall affect the right of any person entitled to any mine or minerals of any description whatsoever under a street along which any authorised street tramway is laid to work the mine or get the minerals; but this shall not affect any liability (whether civil or criminal) of the person so entitled in respect of damage to the authorised street tramway resulting from the exercise of any such right.

Saving for highway authorities

66. Nothing in this Order shall affect any power of a highway authority to widen, alter, divert or improve any highway along which a street tramway is laid.

PART VI

MISCELLANEOUS AND GENERAL

Disclosure of confidential information

67. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 29 or article 32 above, and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter the land.

Certification of plans, etc.

68. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections, the land plans and the works plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, sections and plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

69.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978⁽⁴¹⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body, and
- (b) in any other case, his last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it), and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

70. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

71. Unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

3rd July 2001

Ellis Harvey
Head of the Transport and Works Processing
Unit,
Department of Transport, Local Government and
the Regions

(41) 1978 c. 30.