



# City of Edinburgh (Guided Busways) Order Confirmation Act 1998

## 1998 CHAPTER iii

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to City of Edinburgh (Guided Busways).  
[28th July 1998]

WHEREAS the Provisional Order set forth in the Schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said Order should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Confirmation of Order in Schedule**

The provisional Order contained in the Schedule hereunto annexed is hereby confirmed.

### **2 Short title**

This Act may be cited as the City of Edinburgh (Guided Busways) Order Confirmation Act 1998.

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*Provisional Order to authorise The City of Edinburgh Council to develop guided busways between Edinburgh airport and the city centre of Edinburgh for the provision of guided vehicle services; to authorise the construction of works and the purchase of lands; to confer further powers on the Council; and for other purposes.*

WHEREAS—

- (1) By virtue of section 150 of the Local Government (Scotland) Act 1973 The City of Edinburgh Council (hereinafter called “the Council”) are vested with wide powers in relation to public transport for the city of Edinburgh:
- (2) And whereas by section 151(1) of the Roads (Scotland) Act 1984 the Council are the local roads authority for the city of Edinburgh:
- (3) And whereas by section 121A of the Road Traffic Regulation Act 1984 the Council are the traffic authority for the city of Edinburgh:
- (4) And whereas by section 63 of the Transport Act 1985 the Council are under a general duty to secure the provision of public transport services in the city of Edinburgh:
- (5) And whereas the provision of guided busways between Edinburgh airport and the city centre of Edinburgh for guided vehicle services would be of public advantage:
- (6) And whereas it is expedient that the Council should be authorised to construct the works authorised by this Order and to acquire or use the lands referred to in this Order:
- (7) And whereas it is expedient that the other powers in this Order should be conferred upon the Council and that the other provisions of this Order should be enacted:
- (8) And whereas plans and sections showing the lines and levels of the works authorised by this Order, with a book of reference to such plans containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands and other property acquired or which may be taken or used for the purposes or under the powers of this Order, have been deposited with the sheriff clerk of the Edinburgh sheriff court district:
- (9) And whereas the purposes of this Order cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936:

Now, therefore, in pursuance of the powers contained in the last mentioned Act, the Secretary of State orders as follows:—

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## PART I

### PRELIMINARY

#### Short title

##### 1 Short title

This Order may be cited for all purposes as the City of Edinburgh (Guided Busways) Order 1998.

#### Commencement

##### 2 Commencement

- (1) Except as provided in subsection (2) below, this Order shall come into force on the day on which the Act of Parliament confirming it is enacted.
- (2) Section 51 (Disapplication) of this Order shall come into force on such day as the Secretary of State may specify by Order made by statutory instrument.

#### Interpretation

##### 3 Interpretation

- (1) In this Order terms, words and expressions to which meanings are assigned by any public Act wholly or partially incorporated with this Order shall, subject to the provisions of this Order, have the said respective meanings unless there is something in the subject or context inconsistent with or repugnant to such construction.
- (2) The following words and expressions in this Order have, unless there is something in the subject or context repugnant to such construction, the meanings hereby assigned to them, that is to say:—
  - “Act of 1984” means the Telecommunications Act 1984;
  - “Act of 1997” means the Town and Country Planning (Scotland) Act 1997;
  - “building” includes structure or any other erection;
  - “carriageway” has the meaning given to it by section 151 of the Roads (Scotland) Act 1984;
  - “construct” includes make, build, erect, install, provide, execute, place, alter, maintain and renew and “construction” shall be construed accordingly;
  - “Council” means The City of Edinburgh Council;
  - “council solicitor” means the solicitor to the Council;
  - “deposited plans”, “deposited sections” and “deposited book of reference” mean respectively the plans, sections and book of reference which have been deposited in connection with this Order;
  - “enactment” means any enactment, whether public general or local, and includes an enactment in this Order and in the Act confirming this Order and any order, byelaw, rule, regulation, scheme and other instrument having effect by virtue of an enactment;
  - “existing” means existing at the commencement of this Order;
  - “footpath” and “footway” have the meanings given to them by section 151 of the Roads (Scotland) Act 1984;

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“guided busway” means a way for the passage of vehicles guided wholly or mainly by a means external to the vehicle (whether connected to the vehicle or not) and not being a railway or a road;

“guided vehicle” means a vehicle constructed or adapted for use on a guided busway whether or not it is being so used;

“guided vehicle service” means a vehicular transport service whereby guided vehicles run for all or part of their journey on a guided busway authorised by this Order;

“land” includes land covered by water, any interest in land and any servitude or rights in or over land;

“the Land Compensation Act” means the Land Compensation (Scotland) Act 1963;

“the limits of deviation” means the limits so shown on the deposited plans;

“the limits of land to be acquired or used” means the limits marked “limit of land to be acquired or used” on the deposited plans;

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

“operational land” has the meaning assigned to it by section 215 of the Act of 1997;

“operator”, in relation to a telecommunications code system, means the person authorised by a licence under section 7 of the Act of 1984 to run such a system;

“Railtrack” means Railtrack PLC, and any associated company of Railtrack PLC which holds property for railway purposes, and for the purpose of this definition, “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

“railway property” means—

- (a) any railway of Railtrack within existing statutory limits and any works connected therewith and includes any land within the said limits held or used for the purpose of any such railway or works;
- (b) the railway stations constructed in Edinburgh Park on the Edinburgh to Glasgow (Queen Street) Line and at Gogar, and any lands held or used as part of or in connection with those stations; and
- (c) Work No. 7A and any lands held or used for the purpose of that work;

“road” has the meaning given to it by section 151 of the Roads (Scotland) Act 1984;

“sheriff” means the sheriff principal of the sheriffdom of Lothian and Borders and includes any sheriff of the Edinburgh sheriff court district;

“sheriff clerk” means the sheriff clerk of the Edinburgh sheriff court district;

“telecommunication apparatus” has the same meaning as in paragraph 1(1) of Schedule 2 to the Act of 1984;

“telecommunications code system” means a telecommunication system, the running of which is authorised by a licence under section 7 of the Act of 1984;

“traffic sign” has the meaning given to it by section 64 of the Road Traffic Regulation Act 1984;

“tribunal” means the Lands Tribunal for Scotland; and

“works” means the works authorised by this Order.

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- (3) All areas, directions, distances, lengths and widths stated in any description of works, powers or lands other than in section 26 (Power to deviate) of this Order shall be construed as if the words “or thereby” were inserted after each such area, direction, distance, length and width.

## **Incorporation of Acts**

### **4 Incorporation of Acts**

- (1) The Lands Clauses Acts (except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845), so far as they are applicable for the purposes of, and are not varied by or inconsistent with, the provisions of this Order, are incorporated with this Order.
- (2) In construing, for the purposes of this Order, the enactments incorporated with this Order—
- (a) this Order shall be deemed to be the special Act;
  - (b) the Council shall be deemed to be the promoter of the undertaking or the company; and
  - (c) the works shall be deemed to be the works or the undertaking.

## **PART II**

### **LANDS**

## **Power to take lands**

### **5 Power to take lands**

Subject to the provisions of this Order, the Council may compulsorily enter upon, take and use all or any of—

- (a) the lands shown on the deposited plans and described in the deposited book of reference which they may require for the purposes of the works; including for the improvement and development of any lands fronting or abutting on or adjacent to a guided busway or any road or other way or for the purposes of recoupment, reinstatement or exchange or for any other purposes of this Order; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 1 to this Order (being land shown on the deposited plans as within the limits of land to be acquired or used) as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

## **Acquisition of part only of certain properties**

### **6 Acquisition of part only of certain properties**

- (1) For the purposes of this Order, the following provisions of this section shall have effect in substitution for section 90 of the Lands Clauses Consolidation (Scotland) Act 1845.
- (2) No person shall be required to sell a part only of any house, building or factory, or of a park or garden belonging to a house or other premises, if he is willing and able to sell the whole of the house, building, factory, park or garden unless the tribunal determines—

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- (a) in the case of a house, building or factory that such part as is proposed to be taken can be taken without material detriment to the house, building or factory; or
  - (b) in the case of a park or garden that such part as aforesaid can be taken without seriously affecting the amenity or convenience of the house or other premises to which it belongs.
- (3) If the tribunal determines as aforesaid, compensation shall be awarded in respect of any loss due to the severance of the part proposed to be taken in addition to the value of that part and thereupon the person interested shall be required to sell to the Council that part of the house, building, factory, park or garden.
- (4) In determining whether—
- (a) a part of a house, building or factory can be taken without material detriment to the house, building or factory; or
  - (b) part of a park or garden belonging to a house or other premises can be taken without seriously affecting the amenity or convenience of the house;
- the tribunal shall—
- (i) take into account not only the effect of the severance but also the use to be made of the part proposed to be acquired and, in a case where the part is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land; and
  - (ii) have regard not only to the right or interest which is to be acquired in or over the land, but also to any adjoining land belonging to the same owner and subject to compulsory acquisition by virtue of this Order.

### **Power to acquire servitudes compulsorily in certain cases**

#### **7 Power to acquire servitudes compulsorily in certain cases**

Notwithstanding anything in this Order or in any Act wholly or partly incorporated herewith, the Council may, instead of acquiring any land that they are authorised to acquire compulsorily under this Order, purchase and acquire compulsorily such servitudes or rights over or in any such lands as they may require for the purpose of constructing and using or removing the works or for the purpose of obtaining access to the works, by creating as well as by purchasing such servitudes or other rights already in existence, without the Council being obliged or compelled to purchase any greater interest in, under or over the same, and the provisions of the Lands Clauses Acts shall extend and apply to such servitudes and rights as if the same were lands within the meaning of those Acts.

### **Temporary possession of land for construction of works**

#### **8 Temporary possession of land for construction of works**

- (1) The Council may in connection with the carrying out of the works authorised by this Order—
- (a) enter upon and take temporary possession of the 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;
  - (b) remove any buildings and vegetation from that land; and



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- (c) construct temporary works (including the provision of means of access) and buildings on the land.
- (2) All private rights of way over any land of which the Council may take temporary possession under this section shall be suspended and unenforceable against the Council for so long as the Council remain in lawful possession of the land.
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this section the Council shall give notice of the intended entry to the owners and occupiers of the land.
- (4) (a)

The Council shall not, without the agreement of the owners and occupiers of the land, remain in possession of any land under this section after the end of the period of two years beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 2 to this Order.

  - (b) Before giving up possession of the land, the Council shall remove all temporary works and structures constructed by them on the land and, subject to any agreement to the contrary with the owners and occupiers of the land, restore the land to the reasonable satisfaction of the owners and occupiers; but the Council shall not be required to replace a building removed by them under this section.
- (5) (a)

The Council shall compensate the owners and occupiers of land of which temporary possession is taken under this section (including any person entitled to the enjoyment of those private rights of way referred to in subsection (2) above) for any loss or damage which may result to them by reason of the exercise of the powers of this section in relation to that land.

  - (b) Without prejudice to section 63 (No double recovery) of this Order, nothing in this section shall relieve the Council from liability to compensate under any 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 (a) above.
- (6) Any dispute as to a person's entitlement to compensation under subsection (5)(a) above or as to the amount thereof shall be determined in accordance with the provisions of the Land Compensation Act.
- (7) The powers of compulsory purchase of land conferred by this Order shall not apply in relation to the land referred to in subsection (1) above except that the Council shall not be precluded from purchasing new rights over any part of that land under section 7 (Power to acquire servitudes compulsorily in certain cases) of this Order.
- (8) Where the Council take possession of land under this section, they shall not be required to purchase the land or any interest in it.

### **Temporary possession of land for maintenance of works**

#### **9 Temporary possession of land for maintenance of works**

- (1) At any time during the maintenance period relating to any of the works authorised by this Order the Council may—
  - (a) enter upon and take temporary possession of any land which is—

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- (i) within 20 metres from that work; and
  - (ii) within the limits of deviation for the works or the limits of land to be acquired or used;
- if such possession is reasonably required for the purpose of, or in connection with maintaining the work, or any ancillary works connected with it; 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) Subsection (1) above shall not authorise the Council 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 section the Council shall serve notice of the intended entry on the owners and occupiers of the land.
  - (4) The Council may only remain in possession of land under this section for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.
  - (5) Before giving up possession of land of which temporary possession has been taken under this section, the Council shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
  - (6) The Council shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this section for any loss or damage arising from the exercise in relation to the land of the powers conferred by this section.
  - (7) Any dispute as to a person's entitlement to compensation under subsection (6) above, or as to the amount of the compensation, shall be determined in accordance with the provisions of the Land Compensation Act.
  - (8) Without prejudice to section 63 (No double recovery) of this Order, nothing in this section shall affect any liability to pay compensation under any 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 subsection (6) above.
  - (9) Where the Council take possession of land under this section, they shall not be required to purchase the land or any interest in it.
  - (10) In this section—
    - (a) “the maintenance period” in relation to any of the authorised works, means the period of 5 years beginning with the date on which that work is opened for use; and
    - (b) 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.

### **Persons under disability may grant servitudes, etc**

#### **10 Persons under disability may grant servitudes, etc**

- (1) Persons empowered by the Lands Clauses Acts to sell and convey or dispose of lands may, if they think fit, subject to the provisions of those Acts and of this Order, grant to the Council any servitude, right or privilege (not being a servitude, right or privilege of

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water in which persons other than the grantors have an interest) required for any of the purposes of this Order in, over or affecting any such lands.

- (2) The provisions of the said Acts with respect to lands and feu duties or ground annuals so far as the same are applicable in this behalf shall extend and apply to such grants and to such servitudes, rights and privileges as aforesaid respectively.

### **Extinguishment of private rights of way over lands acquired**

#### **11 Extinguishment of private rights of way over lands acquired**

- (1) All private rights of way over any lands which may under the powers of this Order be acquired compulsorily shall be extinguished as from the date of such acquisition whether compulsorily or by agreement, or on the entry on the land under section 14 (Power of entry on lands compulsorily acquired) of this Order whichever is the sooner.
- (2) The Council shall make compensation to all parties interested in respect of any such rights.
- (3) Such compensation, in the case of difference, shall be determined in accordance with the provisions of the Land Compensation Act.

### **Power to enter upon lands and buildings for survey and valuation**

#### **12 Power to enter upon lands and buildings for survey and valuation**

Subject to the provisions of this Order, the Council and their surveyors and officers, and any other person duly authorised in writing under the hand of the council solicitor, may at all reasonable times in the day upon giving on the first occasion not less than seven days and on subsequent occasions not less than three days' previous notice in writing to the occupier, enter upon and into the lands and buildings by this Order authorised to be taken or used or any of them, for the purpose of surveying and valuing the said lands and buildings.

### **Further powers as to entry on lands**

#### **13 Further powers as to entry on lands**

- (1) Subject to the provisions of this Order, the powers of entry upon lands conferred upon the Council and their surveyors, officers and others by section 12 (Power to enter upon lands and buildings for survey and valuation) of this Order shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein:

Provided that such power shall not be exercised with respect to any land unless notice of the intention of the Council to do so has been included, and the nature of the operations proposed to be carried out has been specified, in the notice required to be given to the occupier of the land pursuant to the said section and in any such case the Council shall not be required to give further notice in respect of any subsequent entry on the land for the purposes of carrying out the operations specified in the notice.

- (2) In the exercise of the powers conferred by this section, the Council shall cause as little detriment and inconvenience to any person as circumstances allow and shall make compensation to the owners and occupiers of any lands or the owners of any services injuriously affected by the exercise of such powers, such compensation in

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case of difference to be determined in accordance with the provisions of the Land Compensation Act.

### **Power of entry on lands compulsorily acquired**

#### **14 Power of entry on lands compulsorily acquired**

Subject to the provisions of this Order, where the Council are by this Order authorised to purchase land compulsorily then at any time after notice to treat has been served, they may, after giving to the owner and occupier of the land not less than 3 months' notice in writing, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with the provisions of sections 83 to 88 of the Lands Clauses Consolidation (Scotland) Act 1845, but subject to payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

### **Disregard of recent improvements and interests**

#### **15 Disregard of recent improvements and interests**

In determining a question with respect to compensation claimed in consequence of the compulsory purchase of land or of rights or servitudes in or over 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 (whether on the land purchased or on any other land with which the claimant is, or was at the time of the erection, executing or making of the building, works, improvement or alteration, directly or indirectly concerned);

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, as the case may be, was not reasonably necessary.

### **Compensation in respect of depreciation in value of interest in land subject to standard security**

#### **16 Compensation in respect of depreciation in value of interest in land subject to standard security**

- (1) Where an interest in land is subject to a standard security—
- (a) any compensation which is payable under this Order in respect of the depreciation in value of that interest shall be calculated as if the interest were not subject to the standard security;
  - (b) a claim for the payment of any such compensation may be made by the heritable creditor under a standard security granted before the happening of the event giving rise to the compensation, but without prejudice to the making of a claim by any other person; and
  - (c) any such compensation payable in respect of the interest in land subject to the standard security shall be paid to the heritable creditor or where there is more than one heritable creditor, to the first ranking heritable creditor, and shall in either case be treated by the heritable creditor as if it were received as

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proceeds of sale and applied in the order of priority specified in section 27 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

- (2) In this section “standard security” includes a bond and disposition in security and any other real right in the nature of a security.

### **Set-off of betterment against compensation**

#### **17 Set-off of betterment against compensation**

In determining the amount of compensation or purchase money payable to any person in respect of his interest in land acquired under this Order in a case where—

- (a) he has an interest in any other land contiguous with or adjacent to the land so acquired; and
- (b) the value of his interest in any such contiguous or adjacent land is enhanced by reason of the works authorised by this Order or any of them;

the amount of the enhancement in value shall be set off against the compensation or purchase money.

### **Agreements with owners of property**

#### **18 Agreements with owners of property**

Subject to the provisions of this Order, and in connection with the powers granted to them thereby, the Council may enter into agreements with any owners of property or other persons interested in lands, houses or property with respect to the purchase by the Council of any such lands, houses or property or any rights or servitudes in, over or affecting the same for such consideration, being a sum of money in gross or a grant of land or partly money and partly land, as may be agreed upon between the Council and such owners or other persons.

### **Power to reinstate owners of property**

#### **19 Power to reinstate owners of property**

The Council may enter into agreements with the owners of, or other persons interested in, any land which may be acquired under the provisions of this Order, or which may be in the neighbourhood of any of the works, with respect to the reinstatement of such owners or other persons and with respect to the exchange of lands for that purpose and the Council may pay or receive money for equality of exchange.

### **Period for compulsory purchase of lands**

#### **20 Period for compulsory purchase of lands**

- (1) The powers of the Council under section 5 (Power to take lands) of this Order for the compulsory purchase of lands for the purposes of this Order shall cease on 31st December 2002.
- (2) The powers of the Council for the compulsory acquisition of such lands and servitudes shall, for the purposes of this section, be deemed to have been exercised if before 31st December 2002 notice to treat has been served in respect of those lands and servitudes.

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## **Power as to acquisition and use of additional lands**

### **21 Power as to acquisition and use of additional lands**

- (1) In addition to the lands which the Council are authorised to acquire by section 5 (Power to take lands) of this Order the Council may acquire, by agreement, any lands required for the following purposes:—
  - (a) providing for the relocation of population or industry from any lands within the limits of deviation;
  - (b) providing recreational land or allotments in substitution for any lands within the limits of deviation;
  - (c) forming junctions between the works or any part thereof and a road or other way; and
  - (d) executing, improving or maintaining the works.
- (2) The Council may be authorised by the Secretary of State to purchase compulsorily any lands for the purposes mentioned in subsection (1) of this section and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to any such compulsory purchase as if this section had been contained in a public general Act in force immediately before the commencement of that Act.
- (3) The Council may use any lands acquired by them in pursuance of the provisions of subsection (1) or (2) of this section, or any other land vested in them, for such purposes and for the purposes of section 25 (Subsidiary works) of this Order.

## **Power to retain, sell, etc., lands**

### **22 Power to retain, sell, etc., lands**

- (1) Notwithstanding anything to the contrary contained in the Lands Clauses Consolidation (Scotland) Act 1845, the Council may retain, hold and use for such time as they think fit or may from time to time sell, feu, lease, excamb or otherwise dispose of any lands vested in or belonging to them for the purpose of the works or that may be acquired under the provisions of this Order and that on such terms, conditions, reservations and restrictions as regards its use (not inconsistent with any condition, restriction or obligation binding on the Council and their successors in title) as to the Council may seem fit.
- (2) The proceeds of the sale of any lands by the Council shall be applied only to purposes to which capital is properly applicable including the redemption of debt.

## **Correction of errors in deposited plans and book of reference**

### **23 Correction of errors in deposited plans and book of reference**

- (1) If the deposited plans, or the deposited book of reference, are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Council, after giving not less than 10 days' notice to the owner, lessee or occupier of the land in question, may apply to the sheriff for the correction thereof.
- (2) If on any such application it appears to the sheriff that the misstatement or wrong description arose from mistake he shall certify the fact accordingly and shall in his certificate state in what respect any matter is misstated or wrongly described.

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- (3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons, and with the sheriff clerk and with the council solicitor and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the Council to take the land or, as the case may be, a right over the land and execute the works in accordance with the certificate.
- (4) A person with whom a copy of a certificate is deposited under this section shall keep it with the other documents to which it relates.

### **PART III**

#### **WORKS**

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

##### **24 Power to execute works**

Subject to the provisions of this Order, the Council may construct in the lines and situations and within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections—

- (a) the works specified in Part I of Schedule 3 to this Order together with all necessary and proper appliances, works and conveniences incidental or subsidiary thereto; and
- (b) the further works specified in Part II of Schedule 3 to this Order together with all necessary and proper appliances, works and conveniences incidental or subsidiary thereto.

##### **Subsidiary works**

##### **25 Subsidiary works**

- (1) Subject to the provisions of this Order, the Council may, within the limits of deviation shown on the deposited plans, construct whether temporarily or permanently, all such subsidiary or incidental works and conveniences as may be necessary or expedient for the purposes of, or in connection with, the construction, maintenance and use of the works, including but without prejudice to the foregoing—
  - (a) stations, platforms and stopping places, and accesses to them;
  - (b) works for the alteration or demolition of any building;
  - (c) works to alter the position of any street furniture or apparatus, including mains, sewers, drains and cables;
  - (d) works to alter the course of, or otherwise interfere with non-navigable rivers, streams or watercourses;
  - (e) works for the prevention of flooding;
  - (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;
  - (g) works for the benefit or protection of premises affected by the authorised works;
  - (h) works for the alteration or maintenance of any bridge over a guided busway (other than a bridge forming part of the operational land of Railtrack);
  - (i) apparatus in a guided busway, any road or other way; and

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- (j) works for the provision and alteration of parking facilities and buildings in connection with such facilities.
- (2) In the exercise of the powers conferred by this section the Council shall—
  - (a) cause as little detriment and inconvenience to any person as circumstances allow; and
  - (b) make compensation to the owners and occupiers of any lands injuriously affected.
- (3) Such compensation, in case of difference, shall be determined in accordance with the provisions of the Land Compensation Act.

### **Power to deviate**

#### **26 Power to deviate**

In the construction and maintenance of the works, the Council may deviate laterally from the lines or situations of the works shown on the deposited plans to any extent not exceeding the limits of deviation shown upon those plans and may deviate vertically from the levels shown on the deposited sections to any extent upwards not exceeding 6 metres between point Z1 and point Z2, shown on the section for Work No. 4, and between point Z3 and point Z4 shown on the section for Work No. 2, and 3 metres elsewhere and to such extent downwards as may be found necessary or convenient and may alter the radius of any curve shown or described on the deposited plans and increase or diminish any inclination or gradient shown thereon.

### **Power to stop up, etc., roads**

#### **27 Power to stop up, etc., roads**

- (1) Subject to the provisions of this Order, the Council may stop up the whole or such part or parts as they think fit of so much of the roads and other ways described in Schedule 4 to this Order shown on the deposited plans as intended to be stopped up, and thereupon all rights of way over the said roads and other ways or parts thereof shall be extinguished and the site and soil thereof shall vest in the Council who may appropriate and use the same.
- (2) Any person who suffers loss by—
  - (a) the appropriation of any site of which he is the owner; or
  - (b) the extinguishment of any private right;
 under this section shall be entitled to be paid by the Council compensation to be determined in case of dispute under and in accordance with the Land Compensation Act.
- (3) The Council may reserve a means of passage along any road or other way stopped up by them pursuant to the powers conferred on them by this section for persons on horseback or leading a horse, pedestrians or pedal cyclists.

### **Power to alter roads, etc., temporarily**

#### **28 Power to alter roads, etc., temporarily**

- (1) Subject to the provisions of this Order, the Council may, for the purposes and during the execution of the works and in maintaining the same, temporarily from time to time break up or cross over or under, alter, divert or stop up, remove or otherwise interfere with,



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any road, way, lane, footway, footpath, cycle track, bridleway, railway, passage, bridge, sewer, drain, watercourse, water main and pipe and electric or telecommunication apparatus in any of the lands shown on the deposited plans and specified in the deposited book of reference with which they may from time to time find it expedient for any of those purposes so to interfere and, where appropriate may for a reasonable time divert the traffic therefrom.

- (2) Without prejudice to the generality of subsection (1) above, the Council may exercise the powers of this section in relation to the roads and other ways specified 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 deposited plans, in column (3) of that Schedule.
- (3) The Council shall provide, when possible and where reasonably practicable, a proper temporary substitute before interrupting the pedestrian or vehicular traffic on any such road, way, lane, footway, footpath, cycle track, bridleway, railway, passage or bridge or the flow of sewage, water, electricity or telecommunication in any such sewer, drain, watercourse, main, pipe or apparatus.
- (4) The Council shall make compensation to all persons injuriously affected by the exercise of such powers.
- (5) Such compensation, in case of difference, shall be determined in accordance with the provisions of the Land Compensation Act.
- (6) (a)

Before the Council exercise the powers conferred on them by this section they shall give not less than 21 days' prior written notice to the following persons of their intention so to do:—

- (i) the operator of any public service vehicles or railway services whose service will be interrupted by the exercise of such power;
  - (ii) the joint police board for the area of Lothian and Borders; and
  - (iii) where the exercise by the Council of the powers of this section will affect any road, the traffic authority for that road.
- (b) In this subsection the term “public service vehicle” shall have the meaning assigned to it in section 1 of the Public Passenger Vehicles Act 1981.

### **Connection of drains, etc., with streams, etc**

#### **29 Connection of drains, etc., with streams, etc**

- (1) For the purpose of draining or carrying away surface water from the works or otherwise, the Council may, within the limits of deviation shown on the deposited plans lay down any drains, sewers, conduits or pipes and other works and maintain, alter or remove any such works and make any convenient connections with any available river, stream or watercourse, or with any sewer or drain.
- (2) The Council shall not—
  - (a) discharge any surface water into any sewer or drain of the sewerage authority except with the consent of the sewerage authority, whose consent shall not be unreasonably withheld, and subject to such terms and conditions as the sewerage authority may reasonably impose; or

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- (b) make any opening into any sewer or drain of the sewerage authority except in accordance with plans approved by the sewerage authority, but approval of those plans by the sewerage authority shall not be unreasonably withheld.
- (3) Before commencing any work pursuant to a consent granted or approval given by the sewerage authority under subsection (2) (a) or (b) above the Council shall give notice to the sewerage authority so as to enable them to supervise the execution of the work, and shall offer them reasonable facilities for doing so.
- (4) Section 30F of the Control of Pollution Act 1974 shall apply to, or to the consequences of, a discharge under the powers of this section into any controlled waters or inland waters within the meaning assigned to those expressions by section 30A(1) of that Act as if this section were not a provision of a local Act or a statutory order for the purposes of section 30I(1)(f) of that Act.
- (5) Unless otherwise agreed by the parties any difference arising between the Council and the sewerage authority under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.
- (6) In this section “sewerage authority” means the East of Scotland Water Authority.

### **Vesting and disposal of materials**

#### **30 Vesting and disposal of materials**

- (1) All materials removed by the Council under the powers conferred on them by this Order and all materials (other than any apparatus belonging to a statutory undertaker or any telecommunication apparatus belonging to or used by the operator of a telecommunications code system) removed by the Council from any road or other way or other place or otherwise obtained by them in the construction and maintenance of the works shall vest in the Council.
- (2) The Council may use all or any of the said materials for the purposes of the construction or maintenance of the works, or they may sell or otherwise dispose of the said materials as they think fit.
- (3) In this section the expression “statutory undertaker” has the meaning given to it in the Act of 1997.

### **Period for completion of works**

#### **31 Period for completion of works**

If the works are not completed by 31st December 2007, the powers by this Order granted for executing the works or otherwise in relation thereto shall cease except as to so much thereof as is then completed.

### **Priority for guided vehicles**

#### **32 Priority for guided vehicles**

The Council may make provision for guided vehicles to take priority over other means of transport at any junction of a guided busway or a way dedicated for use by a guided vehicle and a road or other way.

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### **Power to fell or lop trees**

#### **33 Power to fell or lop trees**

- (1) The Council may fell or lop any tree or shrub in or near any guided busway authorised by this Order or cut back its roots, if they reasonably believe it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction or operation of the guided busway or any apparatus in connection with it, or from constituting a danger to passengers or other persons using the guided busway.
- (2) In exercising the powers of this section the Council shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person who may sustain loss or damage by reason of the exercise of those powers.
- (3) Every case of compensation under subsection (2) above shall be determined in accordance with the Land Compensation Act.

### **Railway enactments**

#### **34 Railway enactments**

Subject to the provisions of this Order any enactment relating to the construction, operation or use of the railways of Railtrack authorised to be realigned or otherwise affected by this Order shall continue to have effect in relation to those railways as so realigned or affected.

### **Powers as to Edinburgh Park and Hermiston Gait**

#### **35 Powers as to Edinburgh Park and Hermiston Gait**

- (1) This section applies to the areas bounded by a broken line on the plan deposited with this Order, entitled “Edinburgh Park and Hermiston Gait”.
- (2) The Council may install such apparatus in, lay out such markings on, and carry out such operations in respect of, any road, footpath or other way (whether existing or still to be formed) within Edinburgh Park and Hermiston Gait as may be necessary or expedient for the provision of guided vehicle services in or through Edinburgh Park or Hermiston Gait, including, without prejudice to the generality of the foregoing, the installation of traffic signals, traffic and other signs, passenger information indicators, lighting, ticketing facilities and bus shelters.
- (3) Guided vehicles used in the provision of guided vehicle services may pass and repass over, and stop on, roads and other ways within Edinburgh Park and Hermiston Gait.

## **PART IV**

### **PROTECTIVE PROVISIONS**

#### **For protection of electricity, gas and water and sewerage undertakers**

##### **36 For protection of electricity, gas and water and sewerage undertakers**

For the protection of the several undertakers referred to in this section the following provisions shall unless otherwise agreed in writing between the Council and the undertakers concerned apply and have effect:—

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- (1) In this section—
- (a) apparatus means—
- (i) in relation to electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to or maintained by such undertakers; and
- (ii) in relation to gas or water and sewerage undertakers, any mains, pipes or other apparatus belonging to such undertakers;
- and includes any building or works constructed for the lodging therein of apparatus;
- “in” in a context relating to apparatus includes under, over, across, along or upon;
- “plans” means plans, sections, elevations, working drawings and specifications;
- “position” includes depth;
- “specified work” means such part of any of the works authorised by this Order as in its execution and maintenance will or may interfere with or affect the support of any apparatus; and
- “the undertakers” means any person authorised to carry on, in any area within which the Council are by this Order authorised to purchase land or execute works, an undertaking for the supply of gas or for the supply of water and for the provision of sewerage or for the generation, transmission or supply of electricity; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained;
- (b) references to the acts or defaults of the Council include the acts or defaults of their workmen or servants or of their contractors or agents or the workmen or servants of such contractors or agents:
- (2) Nothing in this section shall apply to any works in a road or other way:
- (3) Notwithstanding anything in this Order or shown on the deposited plans the Council shall not acquire otherwise than by agreement any apparatus or land belonging to the undertakers:
- (4) At least 28 days before commencing the execution of any specified work the Council shall give the undertakers notice thereof in writing accompanied by plans of such specified work showing the manner in which and the materials with which the same is to be executed and also showing the means to be employed by the Council not only for protecting the apparatus during the execution of such specified work and for securing the continuous supply or provision of electricity, gas or water and sewerage but also for making good any damage to or interference with the apparatus resulting from the execution of such specified work and if it should appear to the undertakers that such specified work will interfere with, damage or endanger their apparatus or materially impede the supply or provision of electricity, gas or water and sewerage the undertakers may within 21 days of the receipt of such notice require the Council to alter the position of the apparatus or to support the same or to substitute such other apparatus as may be required by the undertakers in such manner as may be agreed or determined by arbitration in accordance with the provisions of this section:

Provided that if the undertakers do not requisition the Council as aforesaid the Council may proceed with the execution of such specified work in accordance with the notice given by them and the accompanying plans:

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- (5) Where a requisition has been given by the undertakers under the last foregoing paragraph the protective works agreed upon or determined as aforesaid shall be executed by and at the expense of the Council but to the satisfaction of and under the superintendence of the undertakers (if after notice given to them by the Council of the time and place of such execution they choose to be represented thereat) and the whole reasonable expenses incurred by the undertakers by or through such superintendence shall be paid by the Council:

Provided that the undertakers may intimate by notice in writing to the Council within 14 days after the receipt by the undertakers of notice of the intended commencement of the specified work their intention themselves to do and execute such protective works and the Council shall on the completion thereof pay to the undertakers the whole reasonable expenses incurred by them in the execution of such protective works as may be agreed on or determined as aforesaid:

- (6) If the position of any of the apparatus is altered by the Council or the undertakers or if other apparatus is substituted therefor as provided for in paragraphs (4) and (5) of this section the undertakers may within 21 days of the receipt by them of the notice referred to in paragraph (4) of this section require the Council to or may within the said period notify the Council of their intention themselves to substitute and may substitute apparatus of a greater size than the apparatus so altered or removed and in that event the undertakers shall pay to the Council or shall themselves bear the additional cost attributable to the substitution of such larger apparatus, save to the extent that such additional cost is due to using apparatus of the nearest currently available type, capacity or dimensions:
- (7) The Council shall indemnify the undertakers against all claims, demands, costs, damages and expenses made or taken against or recovered from or incurred by the undertakers by reason or in consequence of any damage done by the Council to any apparatus or of any interruption in the supply or provision by the undertakers of electricity, gas or water and sewerage which may be in any way occasioned either by reason of the execution by the Council of the works or by the acts or defaults (in or in connection with such execution) of the Council:
- (8) The Council shall not be liable to the undertakers under the provisions of paragraph (7) above where or to the extent that the damage or interruption is the result of any act or omission authorised in writing by the undertakers which has not been done or omitted to be done negligently:
- (9) Notwithstanding the temporary stopping up of any road or other way under the powers of this Order the undertakers may exercise the same rights of access as they now enjoy to any apparatus:

Provided that in exercising the said rights of access the undertakers shall not interrupt the execution, maintenance or use of any works of the Council authorised by this or any other order and the undertakers shall compensate the Council for any damage to such works occasioned by the exercise of the said rights:

- (10) In relation to any apparatus which in the opinion of the chief engineer of an undertaker might be affected by any of the works authorised by this Order, the undertakers shall, if so requested by the Council, furnish to the Council—
- (a) such plans of the apparatus as the undertakers possess or are able without unreasonable expense to obtain; and

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- (b) such information about the apparatus as the undertakers can reasonably be expected to supply:
- (11) Unless otherwise agreed by the parties any difference arising between the Council and the undertakers under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.

### **For protection of Railtrack**

#### **37 For protection of Railtrack**

For the protection of Railtrack the following provisions shall unless otherwise agreed in writing between the Council and Railtrack apply and have effect:—

- (1) In this section—

“construction” includes execution, placing and alteration and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer to be appointed by Railtrack;

“plans” includes sections, drawings, soil and other reports, calculations, details of method of construction, specifications, staging proposals and programmes;

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred or suffered by a train operator as a consequence of any restriction of use of Railtrack’s railway network (including any station operated in connection with that network) as a result of the specified works or the failure thereof (other than a failure of Work No. 7A, if and to the extent that that Work has become the responsibility of Railtrack) or of any such failure, act or omission as is mentioned in paragraph (21) below;

“restriction of use” means the taking of any possession of any part of Railtrack’s network, the imposition of any temporary speed restriction, any alteration to the passenger rail timetable which would not otherwise be necessary, any limitation of the exercise of any right in respect of that network already enjoyed by a train operator and any other matter which diminishes the value, utility or benefit to a train operator of any permission which it may have to use Railtrack’s railway network;

“the specified works” means so much of the works as may be situated upon, across, under or over or may in any way affect railway property and includes the construction, maintenance and renewal of such works; and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993; and references to the failure of Work No. 7A if and to the extent that that Work has become the responsibility of Railtrack do not include a failure of that Work which is caused in whole or substantially in part by any action, neglect or default of the Council in constructing that Work:

- (2) The Council shall not under the powers of this Order acquire compulsorily any railway property but they may in accordance with the provisions of section 7 (Power to acquire servitudes compulsorily in certain cases) of this Order and, subject to paragraph (3) below, acquire such servitudes or rights over or in any railway property delineated on the deposited plans as they may reasonably require for the purposes of the specified works:

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- (3) The Council shall, before exercising any right of entry in or over railway property under the powers of this Order, supply to Railtrack a proper and sufficient description of the servitudes or other rights proposed to be purchased or exercised in or over that property including all material terms and conditions for that purchase or exercise (other than in respect of compensation which in case of dispute as to the amount thereof shall be referred to the tribunal) and the Council shall not enter the property until the servitudes or other rights have been approved in writing by Railtrack or settled by arbitration:

Provided that approval of the servitudes or other rights proposed to be purchased or exercised shall not be unreasonably withheld, and that if, within 56 days after such description of the servitudes or other rights proposed to be purchased or exercised has been supplied to Railtrack, they shall not have notified their disapproval of the servitudes or other rights and the grounds of their disapproval, they shall be deemed to have approved the purchase or exercise of the servitudes or other rights as proposed:

- (4) The Council shall by means of a fence or barrier fence off railway property immediately adjoining the specified works to the reasonable satisfaction of the engineer where so required by him:
- (5) (a)

Except with the consent of Railtrack—

- (i) the Council shall not in the exercise of the powers of this Order interrupt pedestrian or vehicular access to any operational station owned or operated by Railtrack or any other railway property without the provision of a proper temporary substitute access to the reasonable satisfaction of Railtrack; and
- (ii) the provisions of section 11 (Extinguishment of private rights of way over lands acquired) of this Order shall not apply to any right of access of Railtrack to any railway property:
- (b) The consent of Railtrack under this paragraph shall not be unreasonably withheld, but may be given subject to reasonable conditions:
- (6) The Council shall before commencing the specified works furnish to Railtrack proper and sufficient plans thereof for the reasonable approval of the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or, in the event of dispute, settled by an arbiter:

Provided that if within 56 days after such plans have been furnished to Railtrack the engineer has not intimated in writing his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the same:

- (7) If, following consideration by the engineer or Railtrack of any plans or descriptions required by this Order to be submitted to either of them by the Council, the engineer or Railtrack refuse consent to or require modification of those plans or descriptions, the Council shall, following consultations with the engineer or Railtrack as appropriate, resubmit those plans or descriptions for the approval of Railtrack pursuant to the relevant paragraph of this section:

Provided that if those plans or descriptions are resubmitted as aforesaid, the engineer or Railtrack shall be required to respond within 35 days, failing which the engineer or Railtrack shall be deemed to have approved those resubmitted plans or descriptions:

- (8) If within 56 days after such plans have been furnished to Railtrack, Railtrack give notice in writing to the Council that Railtrack desire themselves to construct any part of the specified works which in the reasonable opinion of the engineer will or may affect the

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stability of railway property, or the safe operation of traffic on the railways of Railtrack, then if the Council desire such part of the specified works to be constructed Railtrack shall construct the same with all reasonable despatch on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled as aforesaid:

Provided that in the event of Railtrack not constructing or completing such part of the specified works with reasonable despatch, to the reasonable satisfaction of the Council, the Council may, after giving 28 days' notice in writing to the engineer, themselves construct or complete such part of the specified works:

- (9) Upon signifying his approval or disapproval of the said plans the engineer may specify any protective works whether temporary or permanent which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of railway property or the continuation of the safe and efficient operation of the railways of Railtrack or the services of operators using the same and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack or by the Council if Railtrack so desire, with all reasonable despatch and the Council shall not commence the construction of the specified works until the engineer shall have notified the Council that the protective works have been completed to his reasonable satisfaction:

Provided that in the event of Railtrack not constructing or completing such protective works with reasonable despatch, the Council may, after giving 28 days' notice in writing to the engineer, themselves construct or complete such works and on the completion thereof may commence the construction of the specified works:

- (10) The Council shall give to the engineer 28 days' notice in writing of their intention to commence the construction of any of the specified works and except in emergency (when they shall give such notice as may be reasonably practicable) also of their intention to carry out any works for the repair or maintenance of the specified works:
- (11) The specified works shall, when commenced, be carried out with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and under the supervision (if given) and to the reasonable satisfaction of the engineer and in such manner as to cause as little damage to railway property as may be and so far as is reasonably practicable so as not to interfere with or obstruct the free, uninterrupted and safe use of the railway or the traffic thereon and the use by passengers of railway property and if any damage to railway property or any such interference or obstruction shall be caused or take place the Council shall (except where any such damage, interference or obstruction is caused or takes place during or in consequence of the construction of any part of the specified works by Railtrack in pursuance of paragraph (8) of this section and is attributable to the negligence of Railtrack) notwithstanding any such approval as aforesaid make good such damage and shall on demand pay to Railtrack all expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, interference or obstruction:
- (12) The Council shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof:
- (13) Railtrack shall at all times afford reasonable facilities to the Council and their agents for access to any works carried out by Railtrack under this section during their construction



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and shall supply the Council with such information as they may reasonably require with regard to such works or the method of construction thereof:

- (14) If any alterations or additions either permanent or temporary to railway property shall be reasonably necessary in consequence of the construction of the specified works such alterations and additions may be effected by Railtrack after notice has been given to the Council and the Council shall pay to Railtrack the reasonable cost thereof and any additional cost of maintenance in respect of permanent alterations and additions shall be borne by the Council either by way of annual payment or by a commuted sum to cover all future payments:
- (15) Before undertaking any blasting operation in connection with the specified works which might affect the stability of the railway or the safety of the traffic thereon the Council shall consult with Railtrack and comply with any reasonable requirements of Railtrack in regard thereto without expense to Railtrack:
- (16) The Council shall repay timeously to Railtrack all costs, charges and expenses reasonably incurred by Railtrack—
  - (a) in constructing any part of the works on behalf of the Council as provided by paragraph (8) of this section or in constructing any protective works under the provisions of paragraph (9) of this section including in respect of the cost of maintaining and renewing any permanent protective works constructed under the said paragraphs an annual payment or a commuted sum to cover all future payments;
  - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the works;
  - (c) in respect of any special traffic working resulting from any restrictions which are necessary as a result of the construction, maintenance, repair or failure of the specified works and which may in the reasonable opinion of the engineer be required to be imposed or from the substitution or diversion of services which may be necessary for the same reason;
  - (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary as a result of the specified works or the failure thereof;
  - (e) in respect of the approval by the engineer of plans submitted by the Council and the supervision by him of the specified works:
- (17) If at any time after the completion of the specified works, not being works vested in Railtrack, Railtrack give notice in writing to the Council informing them that the state of repair of the specified works appears to be such as to affect prejudicially railway property, the Council shall, within 28 days of the receipt of such notice, take such steps (if any) as may be reasonably necessary to put the specified works in such state of repair as not to affect prejudicially railway property and, if and whenever the Council fail to do so or in an emergency, Railtrack may make and do in and upon the lands of Railtrack or of the Council all such works and things as shall be requisite to put the specified works in such state of repair as aforesaid and the costs and expenses reasonably incurred by Railtrack in so doing shall be repaid to them by the Council:
- (18) Before providing any illumination or illuminated sign on or in connection with the specified works or in the immediate vicinity of the railway the Council shall consult with Railtrack and comply with any reasonable requirements of Railtrack in regard thereto

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with a view to ensuring that such illumination or illuminated sign could not be confused with any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway:

- (19) If the cost to Railtrack of altering any existing railway within their boundaries or of maintaining or reconstructing any existing railway under any powers existing at the passing of the Act confirming this Order is increased by reason of the existence of the specified works, any such additional expense which Railtrack after giving 56 days' notice to the Council reasonably so incur shall be repayable by the Council to Railtrack:
- (20) At the option of the Council, which may be exercised at any time, Railtrack shall agree with the Council a commuted sum for any outstanding liability for the maintenance costs referred to in paragraph (19) above, and upon payment of that sum by the Council to Railtrack, the Council shall be discharged from that liability:
- (21) The Council shall be responsible for and make good to Railtrack—
- (a) all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to or reasonably incurred by Railtrack—
    - (i) by reason of the specified works or the failure thereof (other than a failure of Work No. 7A, if and to the extent that that Work has become the responsibility of Railtrack);
    - (ii) by reason of any act or omission by the Council or of any persons in their employment or of their contractors whilst engaged upon the specified works; and
  - (b) a sum equivalent to the relevant costs;
- and the Council shall effectively indemnify and hold harmless Railtrack from and against all claims and demands arising out of or in connection with the specified works or of any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by Railtrack on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement approved by the engineer or under his supervision shall not (if it was done without negligence on the part of Railtrack or any person in their employment or of their contractors or agents) excuse the Council from any liability under the provisions of this section:
- Provided that Railtrack shall give to the Council reasonable notice in writing of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Council:
- (22) Subject to the terms of any agreement between Railtrack and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Railtrack shall promptly pay to the train operator any sum received under paragraph (21) above for the relevant costs in respect of that train operator:
- (23) The obligation under paragraph (21) above to pay to Railtrack a sum equivalent to the relevant costs shall, in the event of default, be enforceable against the Council direct by the train operator concerned:
- (24) The Council and Railtrack may enter into, and carry into effect, agreements for the transfer to the Council of—
- (a) any railway property shown on the deposited plans and described in the deposited book of reference;
  - (b) any lands, works or other property held in connection with any such railway property; and

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- (c) any rights and obligations (whether or not statutory) of Railtrack relating to any railway property:
- (25) Unless otherwise agreed by the parties any difference arising between the Council and Railtrack under this section, or between the Council and a train operator under paragraph (23) of this section, (other than a difference as to its meaning or construction) shall be determined by arbitration.

### **Agreements with British Railways Board**

#### **38 Agreements with British Railways Board**

- (1) The Council and the British Railways Board may enter into agreements for the transfer to the Council of any statutory rights and obligations of the British Railways Board relating to the former railway property.
- (2) In this section the former railway property means any works or property comprised in the land numbered 59, 61, 83, 86, 88, 89, 93 and 94 on the deposited plans.

### **For protection of telecommunications operators**

#### **39 For protection of telecommunications operators**

For the protection of telecommunications operators the following provisions shall, unless otherwise agreed in writing between the Council and the telecommunications operator concerned, apply and have effect:—

- (1) In this paragraph—  
“installation” includes construction and “construct” shall be construed accordingly;  
“telecommunications operator” means the operator of a telecommunications code system, and “operator” and “telecommunication system” have the same meanings as in Schedule 4 to the Act of 1984:
- (2) The temporary stopping up or diversion of any road or other way under section 28 (Power to alter roads, etc., temporarily) of this Order shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code:
- (3) Where a road or other way is stopped up, diverted or substituted under section 27 (Power to stop up, etc., roads) of this Order a telecommunications operator whose apparatus is under, over, in, on, along or across the road or other way shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Act had not been passed:
- (4) The Council shall give not less than 28 days' notice in writing of their intention to stop up, divert or substitute any road or other way under section 27 (Power to stop up, etc., roads) of this Order to a telecommunications operator whose apparatus is under, over, in, on, along or across the road or other way:
- (5) Where a notice under paragraph (4) above has been given, the telecommunications operator may, and if reasonably requested so to do by the Council in the notice shall, as soon as reasonably practicable from the service of the notice—  
(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the telecommunications operator may reasonably determine and have power to place it; or

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- (b) provide other apparatus in substitution for and in the same place as the existing apparatus:
- (6) Subject to the provisions of paragraphs (7) to (10) below, the Council shall pay to a telecommunications operator an amount equal to the cost reasonably incurred by the telecommunications operator in or in connection with—
  - (a) the execution of relocation works required in consequence of the stopping up, diversion or substitution of a road or other way; and
  - (b) the doing of any other work or thing rendered necessary by the execution of relocation works:
- (7) If in the course of the execution of relocation works under paragraph (6) above—
  - (a) apparatus of better type or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type or smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type, capacity or dimension; or
  - (b) apparatus (whether existing apparatus or substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was;and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Council, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the telecommunications operator by virtue of paragraph (6) above shall be reduced by the amount of that excess:
- (8) For the purposes of paragraph (7) above—
  - (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined:
- (9) An amount which apart from this paragraph would be payable to a telecommunications operator in respect of works by virtue of paragraph (6) above (and having regard, where relevant, to paragraph (7) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven and a half years earlier so as to confer on the telecommunications operator any financial benefit by deferral of the time for renewal of the apparatus in ordinary course be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992 as revised and reissued from time to time:
- (10) Paragraphs (6) to (9) above shall not apply where the authorised works constitute major transport works for the purposes of Part IV of the New Roads and Street Works Act 1991, but instead—
  - (a) the allowable costs of the relocation works shall be determined in accordance with section 144 of that Act (Sharing of costs of necessary measures) and any regulations for the time being having effect under that section; and

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- (b) the allowable costs shall be borne by the Council and the telecommunications operator in such proportions as may be prescribed by any such regulations:
- (11) Nothing in this section shall impose any liability on the Council with respect to any damage or interruption to the extent that such damage or interruption is attributable to any act or omission of the telecommunications operator, its officers, servants, contractors or other agents:
- (12) The telecommunications operator shall give to the Council reasonable notice of any claim or demand as aforesaid and shall make no settlement or compromise thereof without the consent of the Council, such consent not to be unreasonably withheld or delayed:
- (13) Unless otherwise agreed by the parties any difference arising between the Council and the telecommunications operator under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.

### **For protection of Coal Authority**

#### **40 For protection of Coal Authority**

For the protection of the Coal Authority the following provisions shall, unless otherwise agreed in writing between the Council and the Coal Authority, apply and have effect:—

- (1) In this section expressions defined in the Coal Industry Act 1994 have the same meanings as in that Act:
- (2) The Council shall not under the powers of this Order acquire compulsorily any coal or coal mine vested in the Coal Authority except in the circumstances set out in paragraphs (a) and (b) of section 10(3) of the Coal Industry Act 1994.

## **PART V**

### **PENALTY FARES**

### **Interpretation for Part V**

#### **41 Interpretation for Part V**

- (1) In this Part, unless the context otherwise requires—
- “authorised person” means, in relation to any purpose, a person authorised for that purpose by the Council;
- “fare ticket” means a ticket authorising the person in respect of whom it is issued to use the guided vehicle service;
- “general travel authority” means any permit, other than a fare ticket, authorising the person in respect of whom it is issued to use the guided vehicle service;
- “passenger” means a person travelling on a guided vehicle;
- “penalty fare” means a penalty fare payable pursuant to section 43 (Penalty fares) of this Order;
- “the penalty fare provisions” means sections 43 to 46 of this Order; and
- “stop” means a regular stopping place on a guided vehicle service at which passengers board or alight from guided vehicles.

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- (2) Any reference in this Part to a passenger producing a fare ticket or general travel authority on being required to do so by an authorised person is a reference to producing, when so required, a fare ticket or general travel authority which, either by itself or together with any other document produced by that passenger at the same time, is valid for the journey he has made.
- (3) For the purposes of subsection (2) above, a passenger shall be taken to have made a journey ending at the next scheduled stop.

## **Operation of Part V**

### **42 Operation of Part V**

- (1) The penalty fare provisions have effect in relation to travel on any guided vehicle if an order under subsection (2) below is for the time being in force.
- (2) The Secretary of State may by order (referred to in subsections (3) to (5) below as an “activating order”) provide that the penalty fare provisions shall have effect on and after such day as may be specified in the order.
- (3) The revocation by the Secretary of State of an activating order shall be without prejudice to the power of the Secretary of State to make further activating orders.
- (4) Any activating order, and any order revoking an activating order, may contain such supplementary, incidental and consequential provisions (including transitional provisions) as may appear to the Secretary of State to be necessary or expedient.
- (5) No activating order may be made except at the request of the Council.

## **Penalty fares**

### **43 Penalty fares**

- (1) If a passenger, on being required to do so by an authorised person, fails to produce a fare ticket or a general travel authority, he shall be liable to pay a penalty fare if required to do so by an authorised person.
- (2) (a)
 

A passenger shall not be liable to pay a penalty fare if at the stop where, and the time when, he boarded the guided vehicle—

  - (i) in the case of a passenger falling within paragraph (b) below, there were no facilities for making the required imprint on fare tickets; or
  - (ii) in the case of any other passenger, there were no facilities for the sale of the necessary fare ticket for his journey.
- (b) A passenger falls within this paragraph if (pursuant to a requirement under subsection (1) above) he produces a fare ticket which is invalid only by reason of its not bearing the required imprint.
- (3) Any penalty fare charged in accordance with the penalty fare provisions shall be payable within 21 days commencing on the day on which such penalty fare is charged.
- (4) The amount of any penalty fare charged in accordance with the penalty fare provisions and not paid within 21 days may be recovered from the person charged as a civil debt.

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- (5) Subsections (6) and (7) below have effect with respect to the burden of proof in any action for the recovery of a penalty fare under this section so far as concerns the question whether the facts of the case fall within subsection (2) above.
- (6) In any case where the defender has provided the pursuer with a relevant statement in due time it shall be for the pursuer to show that the facts of the case do not fall within subsection (2) above, and in any other case it shall be for the defender to show that the facts of the case fall within that provision.
- (7) For the purposes of subsection (6) above—
  - (a) a relevant statement is a statement giving an explanation of the defender’s failure to produce a fare ticket or general travel authority, together with any information as to his journey relevant to that explanation (including, in every case, an indication of the stop where he boarded the guided vehicle); and
  - (b) a statement is provided in due time if it is provided when the defender is required to produce a fare ticket or general travel authority, or at any later time before the expiration of the period of 21 days beginning with the day following the day on which the journey is completed.
- (8) In this section “the required imprint” means an imprint containing such information as the Council may choose to require.

#### **Amount of penalty fare**

##### **44 Amount of penalty fare**

- (1) Subject to subsection (3) below, a penalty fare shall be £10 or twice the amount of the full single fare, whichever is the greater.
- (2) In this section “full single fare” means the full single fare in respect of a journey from the stop at which a passenger boarded a guided vehicle to the next stop at which that guided vehicle is scheduled to stop.
- (3) The Secretary of State may by order prescribe that the amount of the penalty fare shall be higher or lower than the amount specified in subsection (1) above, and any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **Document to be issued in connection with penalty fare requirement**

##### **45 Document to be issued in connection with penalty fare requirement**

- (1) An authorised person who requires a passenger to pay a penalty fare shall give him either a receipt for the payment of the amount of the penalty fare (where the passenger makes that payment to the authorised person) or a written notice setting out the amount of the penalty fare, the address to which payment may be made and a statement that payment must be made within 21 days of the person’s receipt of that notice.
- (2) A receipt or notice given under subsection (1) above shall specify the passenger’s destination on the guided vehicle on which he is travelling when required to pay the penalty fare, and shall operate as an authority to him to complete his journey to that destination.
- (3) For the purposes of subsection (2) above, the passenger’s destination shall (unless only one destination is possible in the circumstances) be taken to be the destination stated

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by the passenger or, in default of any statement by him identifying his destination, such destination as may be specified by the authorised person.

### **Notice of penalty fare provisions**

#### **46 Notice of penalty fare provisions**

- (1) It shall be the duty of the Council to secure that a warning notice meeting the requirements of subsection (2) below is posted—
  - (a) at every stop, in such a position as to be readily visible to prospective passengers; and
  - (b) in every guided vehicle for travel on which the penalty fare provisions have effect, in such a position as to be readily visible to passengers travelling on that vehicle.
- (2) A warning notice posted pursuant to subsection (1) above shall (however expressed) indicate the circumstances (as provided in section 43 (Penalty fares) of this Order) in which passengers may be liable to pay a penalty fare and state the amount of the penalty fare.

### **Supplementary provisions**

#### **47 Supplementary provisions**

- (1) A passenger who is required to pay a penalty fare shall, unless he pays, immediately and in cash, the amount of the penalty fare to an authorised person requiring such payment, give to that authorised person, if that person requires him to do so, his name and address; and any person failing to do so shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (2) Where an authorised person requires any passenger to do anything pursuant to any provision of this Order he shall, if so requested by the passenger concerned, produce to that passenger a duly authenticated document showing his authority; and a requirement by an authorised person shall be of no effect if, as respects that requirement, he fails to comply with this subsection.

### **Exclusion of double liability**

#### **48 Exclusion of double liability**

- (1) Where a passenger has become liable to pay a penalty fare in respect of any journey (referred to below as “the relevant journey”), no proceedings may be brought against him for any of the offences specified in subsection (2) below before the end of the period mentioned in section 43 (3) of this Order, and no such proceedings may be brought after the end of that period if—
  - (a) he has paid the penalty fare to the Council before the end of that period; or
  - (b) an action has been brought against him for the recovery of that fare.
- (2) The offences mentioned in subsection (1) above are—
  - (a) any offence under any byelaws made by the Council involving a failure to obtain or produce a fare ticket or general travel authority for the relevant journey; and
  - (b) any offence under section 25(3) of the Public Passenger Vehicles Act 1981 of contravening or failing to comply with any provision of regulations for the time



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being having effect by virtue of that section by failing to pay the fare properly payable for the relevant journey or any part of it.

- (3) If proceedings are brought against any such passenger for any such offence he shall cease to be liable to pay the penalty fare and, if he has paid it, the Council shall be liable to repay to him an amount equal to the amount of that fare.

### **Orders under this Part**

#### **49 Orders under this Part**

Any power to make an order conferred on the Secretary of State by this Part shall be exercisable by statutory instrument.

## **PART VI**

### **MISCELLANEOUS AND GENERAL**

### **Powers of disposal, agreements for operation, etc**

#### **50 Powers of disposal, agreements for operation, etc**

- (1) The Council may sell, feu, lease, excamb, charge or otherwise dispose of the whole or any part of a guided busway or any land held or used in connection therewith.
- (2) The Council may enter into agreements with respect to the construction of a guided busway and the provision of guided vehicle services and any matter consequential, incidental or subsidiary thereto.
- (3) Without prejudice to the generality of subsections (1) or (2) above, any agreement under subsection (1) or (2) above may provide for the exercise by any person of any of the powers conferred on the Council by this Order, including the powers contained within this section.
- (4) The exercise by any person of the powers of any enactment pursuant to any agreement under subsections (1) or (2) above shall be subject to—
- (a) the same restrictions, liabilities and obligations as would apply under that enactment; and
  - (b) unless the meaning or context otherwise requires the same obligations and liabilities as would apply pursuant to any undertaking given to, or in an agreement with, any person in consideration of his refraining from opposition to this Order,
- as would apply if those powers were exercised by the Council.
- (5) Where the exercise by any person of the powers of any enactment pursuant to any agreement under subsection (1) or (2) above is by virtue of subsection (4) above subject to any obligations or liabilities pursuant to any undertaking or agreement referred to in that subsection, then those obligations and liabilities shall not apply to or bind the Council for so long as and to the extent that they apply to that person.

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## **Disapplication**

### **51 Disapplication**

- (1) Section 63(7) of the Transport Act 1985 shall not apply to the Council in respect of guided vehicle services.
- (2) The Council may enter into agreements for service subsidies relating to the operation of guided vehicle services without having to satisfy the condition of section 89(1) of the Transport Act 1985; and section 92(1) of the Transport Act 1985 shall not apply to the Council in respect of any such agreement.

## **Concessionary travel**

### **52 Concessionary travel**

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

## **Fuel duty grants**

### **53 Fuel duty grants**

Section 92 of the Finance Act 1965 (which makes provision for grants towards duty charged on bus fuel) shall apply to guided vehicle services, notwithstanding that such services may not be bus services within the meaning of section 92(8) of that Act.

## **Registration of guided vehicle services**

### **54 Registration of guided vehicle services**

Sections 6 to 9 and 26 to 30 of the Transport Act 1985 (which make provision for registration of local services, and with respect to PSV operator's licences) shall apply to guided vehicle services, notwithstanding that such services may not be local services within the meaning of section 2 of that Act.

## **Trespass**

### **55 Trespass**

Any person who without the express authority of the Council or without reasonable excuse enters upon any part of a guided busway shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **Obstruction to operation**

### **56 Obstruction to operation**

- (1) Any person who, without reasonable excuse, intentionally places any obstruction on any part of a guided busway or otherwise obstructs a guided vehicle on a guided busway shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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- (2) Any person who places any obstruction on any part of a guided busway or otherwise obstructs a guided vehicle on a guided busway shall forthwith remove the obstruction, and if he fails to do so the Council may remove the obstruction.
- (3) (a)
- If anything removed by the Council under subsection (2) above is so marked as to be readily identifiable as the property of any person, the Council shall within one month of its coming into their custody give notice, as required by subsection (6) below, to that person and, if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice, it shall at the end of that period vest in the Council.
- (b) If anything removed by the Council under subsection (2) above is not so marked and is not within three months of its coming into the custody of the Council proved to the Council's reasonable satisfaction to belong to any person, it shall thereupon vest in the Council.
- (4) The Council may at such time and in such manner as they think fit dispose of anything referred to in subsection (3)(b) above which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Council under this section, and, if it is sold, the proceeds of sale—
- (a) shall be paid to any person who, within three months from the time when the thing came into the custody of the Council proves to the reasonable satisfaction of the Council that he was the owner thereof at that time; or
- (b) if within the said period no person proves his ownership at that time, shall vest in the Council.
- (5) If anything removed under this section—
- (a) is sold by the Council and the proceeds of sale are insufficient to reimburse them for the amount of the expenses incurred by them in the exercise of their powers of removal; or
- (b) is unsaleable;
- the Council may recover the deficiency or the whole of the expenses, as the case may be, from the person who placed the obstruction.
- (6) A notice given under subsection (3)(a) above shall specify the thing removed and state that, upon proof of ownership to the reasonable satisfaction of the Council, possession may be retaken at a place named in the notice within the time specified in the notice, being not less than 14 days after the date when the notice is served.

## **Obstruction to construction**

### **57 Obstruction to construction**

- (1) Any person who, without reasonable excuse, intentionally obstructs any person acting under the authority of the Council in setting out the lines of the works, or of constructing any works or who interferes with, moves or removes any apparatus belonging to such person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) Any person who obstructs any person acting under the authority of the Council in setting out the lines of any works, or in constructing any works shall forthwith remove the obstruction, and if he fails to do so the Council may remove the obstruction.

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- (3) Subsections (3) to (6) of section 56 (Obstruction to operation) above shall apply to anything removed by the Council under subsection (2) of this section as they apply to anything removed by them under subsection (2) of section 56.

### **Power to contract for police services**

#### **58 Power to contract for police services**

Agreements may be made—

- (a) between the Council and Lothian and Borders Joint Police Board; or
- (b) between the Council and any person with responsibility for the time being for the British Transport Police Force,

for making available to the Council for the purposes of the operation of a guided vehicle service, 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.

### **Extension of time may be authorised**

#### **59 Extension of time may be authorised**

- (1) On the application of the Council, the Secretary of State may, by order, extend the periods respectively referred to in section 20 (Period for compulsory purchase of lands) and section 31 (Period for completion of works) of this Order or either of such periods.
- (2) Any such period which has been extended under the provisions of this section may, from time to time, be further extended by an order made by the Secretary of State on the application of the Council under this section.
- (3) (a)

An order under this section shall be subject to special parliamentary procedure and accordingly an order under this section shall be deemed to be an order in pursuance of an Act passed after the passing of the Statutory Orders (Special Procedure) Act 1945.

- (b) In the application of section 10 of the said Act to an order under this section, there shall be substituted for the requirements of the empowering enactment referred to in the said section 2 as substituted by section 10 such requirements as to the service of notices and as to the time within which and the manner in which objections may be made to any application made by the Council in pursuance of subsection (1) of this section as may be specified by the Secretary of State.

### **Powers to owners and lessees to give notice as to purchase of lands**

#### **60 Powers to owners and lessees to give notice as to purchase of lands**

If the Secretary of State by order made under the last foregoing section extends the period for the exercise of the powers of the Council for the compulsory purchase of land, the following provisions shall apply after the coming into operation of that order:—

- (1) In this section—
  - “the land” means any land which is for the time being authorised to be acquired compulsorily by this Order;

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“lessee” means a lessee under a lease having a period of not less than 21 years to run at the date of his notice under paragraph (2) of this section:

- (2) If any person being the owner or lessee of any of the land shall give notice in writing to the Council of his desire that his interest in any part of the land specified in the notice shall be acquired as soon as may be the Council shall within a period of three months after the receipt of such notice—
  - (a) enter into a contract with such person for the acquisition of his interest in the land or such part thereof as may be specified in the contract; or
  - (b) serve a notice to treat for the compulsory acquisition of the interest of such person in the land specified in his notice or in such part thereof as may be required by the Council; or
  - (c) serve on such person notice in writing of their intention not to proceed with the purchase of the interest of such person in the land specified in the notice:
- (3) Where notice is given under the last foregoing paragraph by an owner or lessee of land specified in the notice then—
  - (a) if the Council—
    - (i) fail to comply with that paragraph; or
    - (ii) withdraw in pursuance of any statutory provision a notice to treat served on him in compliance with sub-paragraph (b) of that paragraph; or
    - (iii) serve notice on him in compliance with sub-paragraph (c) of that paragraph;the powers conferred by this Order for the compulsory purchase of his interest in the land so specified shall cease;
  - (b) if his interest in part only of the land so specified is acquired in pursuance of a contract or notice to treat under sub-paragraphs (a) or (b) of that paragraph the powers conferred by this Order for the compulsory purchase of his interest in the remainder of the land specified shall cease.

## **Certification of plans, etc**

### **61 Certification of plans, etc**

The Council shall, as soon as practicable after the passing of the Act confirming this Order, submit copies of the deposited book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are true copies of, respectively, the deposited book of reference, the deposited sections and the deposited plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of its contents, subject to any certificate given by the sheriff under section 23 (Correction of errors in deposited plans and book of reference) of this Order.

## **Service of notices**

### **62 Service of notices**

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

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- (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 as it applies for the purposes of this section, the proper address of any person in relation to the service on him of a notice or document under subsection (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 section shall not be taken to exclude the employment of any method of service not expressly provided for by it.

### **No double recovery**

#### **63 No double recovery**

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

### **Saving for town and country planning**

#### **64 Saving for town and country planning**

- (1) The Act of 1997 and any orders, regulations, rules, schemes and directions made or given thereunder and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised or regulated by or under this Order.
- (2) In their application to development authorised by this Order, article 3 of, and Class 29 in Part 11 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (which permit development authorised by any local or private Act or by any Order approved by both Houses of Parliament being an Act or Order designating specifically both the nature of the development thereby authorised and the land upon which it may be carried out) shall have effect as if the authority to develop given by this Order were limited to development begun within 10 years after the passing of the Act confirming this Order.
- (3) Subsection (2) of this section shall not apply to the carrying out of any development consisting of the alteration, maintenance or repair of the authorised works or the substitution of new works therefor.

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## Arbitration

### 65 Arbitration

Where under any provision of this Order any difference (other than a difference to which the provisions of the Lands Clauses Acts, as incorporated in this Order, apply) is to be determined by arbitration, then, unless otherwise provided, the difference shall be referred to, and settled by a single arbiter 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 for the time being of the Institution of Civil Engineers, and the arbiter shall be entitled to state a case for the opinion of the Court of Session pursuant to section 3 of the Administration of Justice (Scotland) Act 1972.

## SCHEDULES

### SCHEDULE 1

#### PURCHASE OF CERTAIN LAND

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Area	Number of land shown on deposited plans	Purpose for which land may be purchased
(1)	(2)	(3)
Part of fields to the south of Castle Gogar.	8 (part) 12 (part)	Landscaping.
Part of field to the east of the driveway leading to Castle Gogar.	15 (part)	Landscaping adjacent to the driveway to Castle Gogar.
Area of open land to the north of Saughton Mains Street.	48 (part) 52 (part)	A working site and access for construction purposes and thereafter the provision of allotments and associated facilities.
Area of land to the rear of the ATC hut.	57 (part)	A working site and access for construction purposes and thereafter the provision of allotments and associated facilities.

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## SCHEDULE 2

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN.

Area	Number of land shown on deposited plans	Purpose for which temporary possession may be taken	Authorised
(1)	(2)	(3)	(4)
Verge and slip road for A8 junction roundabout.	1 (part)	The provision of an access to construct a busway and associated facilities.	1
Gogar Farm track.	7 (part) 9	The provision of an access to construct a busway and associated facilities.	2
Part of the driveway to Castle Gogar.	13 (part) 14	The provision of an access to construct a crossing of Castle Gogar driveway.	2 and 3
Part of field to east of Castle Gogar driveway.	15 (part)	The provision of a working site and for access for construction purposes.	2
An area bounded by the circulatory carriageway of the Gogar roundabout.	19 (part)	The provision of a working site and for access for construction purposes. 20 (part)	3
An area bounded by the circulatory carriageway of the Gogar roundabout.	19 (part) 20 (part)	The provision of a working site and for access for construction purposes.	3
Part of South Gyle Broadway and part of way designated as Road 1 within Edinburgh Park.	21 (part) 27 (part)	The provision of access.	4
Area of land designated for the construction of way designated as Road	28 (part) 29 (part) 30 (part)	The provision of access for construction purposes.	4 and 5



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Area	Number of land shown on deposited plans	Purpose for which temporary possession may be taken	Authorised
(1)	(2)	(3)	(4)
7 within Edinburgh Park.			
Area of open land designated as site J within Edinburgh Park.	28 (part)	The provision of a working site and for access for construction purposes.	4 and 5
Area of open land to the north of Broomhouse Drive and Stenhouse Drive.	42 (part)	The provision of a working site and for access for construction purposes.	5 and 6
	43 (part)		
	45 (part)		
	50 (part)		
Part of the cycle track and industrial access road to the north of Westfield Avenue.	51 (part)	The provision of access for construction purposes.	7
	77 (part)		
Part of the cycle track and industrial access road to the north of Westfield Avenue.	78 (part)	The provision of a working site and for access for construction purposes.	7
	80 (part)		
	81		
Premises to the north of Westfield Road and to the east of Grant Westfield Limited.	82 (part)	The provision of access for construction purposes, and traffic management facilities.	7
	86 (part)		
Land to the south of Westfield Road, east of the South Suburban Railway bridge.			
Part of the parking area for the cleansing depot at Russell Road.	93 (part)	The provision of a working site and for access for construction purposes.	7
Land forming the northern access to the cleansing depot at Russell Road.	95	The provision of access for construction work.	7
	97 (part)		
Land forming the southern access to the cleansing depot at Russell Road.	96	The provision of access for construction works.	7
	97 (part)		

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## SCHEDULE 3

### AUTHORISED WORKS

#### PART I

##### DESCRIPTION OF WORKS SPECIFICALLY AUTHORISED

In the City of Edinburgh district—

Work No.1 — The formation of a car park for Park and Ride to the west of, and forming a junction with, Eastfield Road on the northern side of the A8, the provision of access to and egress from the car park at points A1, A2 and A3, and landscaping.

Work No.1A — A realignment of the northern dumbbell roundabout at the junction of the A8 and Eastfield Road, and landscaping.

Work No.2 — A guided busway commencing at a junction with Eastfield Road 200 metres north of the northern dumbbell roundabout forming part of the junction of Eastfield Road and the A8 and proceeding generally eastwards passing over the Gogar Burn by way of a bridge for a distance of 2244 metres and terminating at a junction with the north western side of the circulatory carriageway of the Gogar Roundabout.

Work No.2A — A bridge carrying Castle Gogar driveway over Work No.2 and the regrading of the said driveway.

Work No.2B — A road commencing at a junction with Work No.2 120 metres northwest of the termination of Work No.2, proceeding generally north-eastwards for a distance of 319 metres and terminating at a junction with the proposed Gogar railway station, adjacent to the East Coast railway line.

Work No.3 — A guided busway commencing at the inner edge of the north-western side of the circulatory carriageway of the Gogar Roundabout, proceeding south-eastwards across the Gogar Roundabout by way of a bridge for a distance of 131 metres and terminating at the inner edge of the south-eastern side of the circulatory carriageway of the Gogar Roundabout.

Work No.3A — A way commencing at the outer edge of the south-eastern side of the circulatory carriageway of the Gogar Roundabout, proceeding generally south-eastwards for a distance of 22 metres and terminating at the north-western side of the slip road between South Gyle Broadway and the A720.

Work No.4 — A guided busway commencing at the south-eastern side of the slip road between South Gyle Broadway and the A720, proceeding generally south-eastwards and southwards through Edinburgh Park for a distance of 1254 metres and terminating at a point 215 metres north of the Edinburgh-Glasgow railway line and 230 metres east-northeast of the southern Gogar Burn culvert under the A720, the reforming of, and provision of access to and egress from, the roundabout designated as Roundabout 3 within Edinburgh Park, diversion of underground pipework and re-profiling of the proposed Road 7 within Edinburgh Park.

Work No.4A — A realignment of the Gogar Burn, including the reconstruction of a culvert under the A720 commencing at a point in the said Gogar Burn 47 metres west of the existing culvert under the A720 and proceeding generally eastwards for a distance of 131 metres and terminating at a point in the Gogar Burn 42 metres east of the existing culvert.

Work No.4B — A realignment of the Gogar Burn from a point 40 metres south and east of its most northerly point within Edinburgh Park, proceeding generally eastwards for a distance of 75 metres and terminating at a point 50 metres south of its most northerly point within Edinburgh Park.

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Work No.4C — A footbridge across South Gyle Broadway.

Work No.4D — A bridge carrying the way designated as Road 8 within Edinburgh Park over Work No.4.

Work No.4E — A realignment of the Gogar Burn commencing at the intersection of the track to the former Redheughs Farm and the Gogar Burn, proceeding generally southwards for a distance of 119 metres and terminating at a point 110 metres south of its commencement.

Work No.5 — A guided busway commencing at a point 215 metres north of the Edinburgh-Glasgow railway line and 230 metres east-northeast of the southern Gogar Burn culvert under the A720, proceeding southwards and then generally eastwards to cross the Edinburgh-Glasgow railway line, by way of a bridge and then generally eastwards along the southern boundary of the Edinburgh-Glasgow railway line, passing over South Gyle Access and Broomhouse Road by way of bridges for a distance of 2110 metres and terminating at a point 230 metres east of Broomhouse Road and the formation of an access to and egress from the busway on the northern side of Bankhead Drive at point E5.

Work No.5A — A way commencing at, and forming a junction with, the northern roundabout within Hermiston Gait, proceeding generally north-eastwards for a distance of 95 metres and terminating at, and forming a junction with, Work No.5.

Work No.5B — A way realigning Cultins Road commencing at a point in that road 100 metres south of the bridge under the Edinburgh-Glasgow railway line, proceeding northwards for a distance of 63 metres and terminating at, and forming a junction with, Work No.5.

Work No.5C — A way commencing at, and forming a junction with, Broomhouse Drive 146 metres east of its junction with Broomhouse Road, proceeding generally north-eastwards for a distance of 101 metres and terminating at, and forming a junction with, Work No.5.

Work No.6 — A guided busway commencing at the termination of Work No.5 and proceeding generally eastwards along the southern boundary of the Edinburgh-Glasgow railway line, passing over Saughton Road by way of a bridge and crossing the Edinburgh-Glasgow railway line by way of a bridge and then proceeding along the northern boundary of the Edinburgh-Glasgow railway line for a distance of 2158 metres and terminating at, and forming a junction with, Balgreen Road 40 metres south of the junction of Baird Drive with Balgreen Road and the provision of an access to and egress from the allotments to the rear of the ATC hut at point F12.

Work No.7 — A guided busway commencing at, and forming a junction with, Balgreen Road 35 metres north of the junction of Whitson Road and Balgreen Road, proceeding generally eastwards along the southern boundary of the Edinburgh-Glasgow railway line passing over the Water of Leith by way of a bridge, passing under the western arm of the South Suburban railway line by means of a bridge, passing over Roseburn Street by way of a bridge, passing over the eastern arm of the South Suburban railway line by way of a bridge, all for a distance of 1070 metres and terminating at, and forming a junction with, the West Approach Road 240 metres east of the junction of Westfield Road with Roseburn Street.

Work No.7A — A realignment of the southern track of the western arm of the South Suburban railway line commencing at a point in that track 10 metres east of its junction with the Edinburgh-Glasgow railway line, proceeding generally south-eastwards for a distance of 333 metres and terminating at a point in that track at the northern end of the existing railway bridge over Westfield Road.

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## PART II

### DESCRIPTION OF FURTHER WORKS

In the City of Edinburgh district—

- (1) Stopping up of footpath between points A4, A5, A6 and A7 adjacent to the northern dumbbell roundabout and substituting therefor a new footpath between points A4, A8 and A7.
- (2) Stopping up of track for access north of the Gogar roundabout between points B3, B4, B5 and B6 and substituting therefor a track between points B7, B8, B9, B5 and B6.
- (3) Stopping up of footpath between points D5 and D6 within Edinburgh Park and substituting therefor a new footpath between points D5, D7, D8 and D6.
- (4) Stopping up of proposed footpath between points D9 and D10 within Edinburgh Park and substituting therefor a new footpath between points D9 and D10.
- (5) Stopping up of footpath between points D11, D12, D13, D14 and D15 within Edinburgh Park substituting therefor a proposed new footpath between points D15, D12, D17 and D16.
- (6) Stopping up of footpath between points D11, D12 and D16 within Edinburgh Park and substituting therefor a new footpath between points D15, D12, D17 and D16.
- (7) Widening of carriageway of Bankhead Drive between points E6 and E7.
- (8) Widening of carriageway of Bankhead Drive between points E10 and E11.
- (9) Widening of carriageway of Broomhouse Drive between points E14, E15 and E16.
- (10) Provision of access from Broomhouse Drive at point F1.
- (11) Narrowing of carriageway of Saughton Mains Street between points F4 and F5.
- (12) Stopping up of footpath between points F8 and F11 and substituting therefor new footpaths between points F8, F9, F10 and F11 and between points F8, F9 and F11.
- (13) Stopping up of footpath to the south of the Jenners Depository between points F13 and F14 and substituting therefor a new footpath between points F13 and F15.
- (14) Stopping up of track between points G1, G2 and G3 and substituting therefor a new track between points G1 and G3.
- (15) Widening of carriageway of the West Approach Road between points G6 and G7.

### SCHEDULE 4

#### ROADS TO BE STOPPED UP.

Area	Road to be stopped up	Extent of stopping up
(1)	(2)	(3)
Hermiston Gait.	Northern spur from northern roundabout.	Between points E1 and E2.

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Area (1)	Road to be stopped up (2)	Extent of stopping up (3)
Sighthill.	Cultins Road.	Between points E3 and E4.
Saughton.	Saughton Mains Street.	Between points F6 and F7.

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## SCHEDULE 5

### ROADS AND WAYS TO BE TEMPORARILY STOPPED UP

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Area (1)	Road to be stopped up (2)	Extent of stopping up (3)
Gogar.	Castle Gogar Driveway.	Between points B1 and B2.
Gogar.	A8 Glasgow Road.	Between points C1 and C2.
Gyle.	South Gyle Broadway.	Between points D1 and D2.
Edinburgh Park.	Road 8.	Between points D3 and D4.
Edinburgh Park.	Road 7.	Between points D18 and D19.
Sighthill.	South Gyle Access.	Between points E8 and E9.
Broomhouse.	Broomhouse Road.	Between points E12 and E13.
Saughton.	Saughton Road.	Between points F2 and F3.
Balgreen.	Balgreen Road.	Between points F16 and F17.
Roseburn.	Roseburn Street.	Between points G4 and G5.”

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