
STATUTORY INSTRUMENTS

2006 No. 3118

The Luton Dunstable Translink Order 2006

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Luton Dunstable Translink Order 2006 and shall come into force on 13th December 2006.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

“the 1984 Act” means the Road Traffic Regulation Act 1984(4);

“the 1985 Act” means the Transport Act 1985(5);

“the 1990 Act” means the Town and Country Planning Act 1990(6);

“the 1991 Act” means the New Roads and Street Works Act 1991(7);

“the 2003 Act” means the Communications Act 2003(8);

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000;

“authorised busway” means any busway or guided busway authorised by this Order;

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

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

“bridleway”, “footpath”, “highway” and “highway authority” have the same meaning as in the 1980 Act;

“busway” means a busway comprised within Work Nos. 1G, 1J, 1N, 2A, 2B and 5;

“carriageway” has the same meaning as in the 1980 Act;

(1) 1961 c. 33.

(2) 1965 c. 56.

(3) 1980 c. 66.

(4) 1984 c. 2.

(5) 1985 c. 67.

(6) 1990 c. 8.

(7) 1991 c. 22. As amended by the [Traffic Management Act 2004](#). c. 18.

(8) 2003 c. 21.

“the Council” means Luton Borough Council;

“the County Council” means Bedfordshire County Council;

“cycle track” means a way over which the public have a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988(9)) with a right of way on foot;

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

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

“guided bus” means a vehicle intended for the carriage of passengers and which is guided by the mode of guidance prescribed for the purposes of section 1(1)(d) of the 1992 Act by article 2(h) of the Transport and Works (Guided Transport Modes) Order 1992(10) (track-based with side guidance) (whether or not capable of being operated in some other way);

“guided busway” means a busway adapted to provide the mode of guidance for a guided bus so prescribed;

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

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

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

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

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

“public communications provider” has the same meaning as in section 151(1) of the 2003 Act;

“the scheduled works” means the works specified in Schedule 1 to this Order;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“Translink” has the meaning given in article 29 (power to operate and use Translink); and

“the tribunal” means the Lands Tribunal.

(2) Where the book of reference, the deposited sections or the deposited plans was or were revised before this Order was made, any reference to it or them in this Order is to the latest version as certified under article 51 (certification of plans etc).

(3) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space over its surface and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

(4) All directions, distances, areas, lengths and points stated in any description of works, powers or lands, shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, area, length, and point, and distances between points on the authorised busway shall be taken to be measured along the centre line of the busway.

(9) 1988 c. 52.

(10) S.I. 1992/3231.

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

(6) References in this Order to points identified by letters shall be construed as references to the points so marked on the deposited plans.

(7) References in this Order to highways lettered FP, BW or BL are references respectively to footpaths, bridleways and bus lanes.

(8) For the purposes of any enactment applying, or operating by reference to, the definition of “public service vehicle” in section 1 of the Public Passenger Vehicles Act 1981(11), that definition shall be taken to include guided buses operating a service making use of the authorised busway.

Application of the 1991 Act

3.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part 3 of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a) and (c) to (h) of section 86(3) of the 1991 Act (which defines what highway authority works are major highway works), or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) In Part 3 of the 1991 Act, references in relation to major highway works, to the highway authority concerned shall, in relation to works which are major highway works by virtue of paragraph (1) be construed as references to the Council.

PART 2

WORKS PROVISIONS

Principal Powers

Power to construct and maintain works

4.—(1) The Council may construct and maintain the scheduled works.

(2) Subject to article 5 (power to deviate), the scheduled works shall be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (7), the Council may from time to time carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) stopping places and such other gaps in the mode of guidance adopted and such number of ways, cross-overs, lay-bys, bus parking areas as may be necessary or convenient;
- (b) works required for or in connection with, the control of vehicular or pedestrian traffic on or in the vicinity of the authorised busway;
- (c) works for the alteration or demolition of any building or structure;

- (d) works to alter the position of any street furniture or apparatus, including mains, sewers, drains and cables;
- (e) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
- (g) works to erect and construct such houses, warehouses, offices, and other buildings, yards, stations, engines, machinery, apparatus, and other works, and conveniences as the Council thinks fit;
- (h) junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way interfered with by, or contiguous with, any of the works described in this paragraph, and works to widen or alter any highway or access way for the purposes of connecting it with any of those works or another highway, or of crossing under or over another highway or access way;
- (i) all such embankments, aprons, abutments, retaining walls, wing walls, culverts and such other works as the Council thinks fit; and
- (j) works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (7), the Council may from time to time carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(5) Where the Council lays down conduits for the accommodation of cables or other apparatus for the purposes of the authorised works or associated traffic control, the Council may provide in, or in connection with, such conduits accommodation for the apparatus of any other person, and manholes and other facilities for access to such accommodation, and may permit the use of such conduits and facilities on such terms and conditions as may be agreed between the Council and such other person.

(6) Without prejudice to the generality of paragraphs (2) and (3), the Council may, in connection with the construction of the scheduled works—

- (a) provide a footpath between points F5 and F6 in the District of South Bedfordshire; and
- (b) provide a footpath between points F18, F23 and F24 in the Borough of Luton.

(7) Paragraphs (3), (4), (5) and (6) shall only authorise the carrying out or maintenance of works outside the limits of deviation for the scheduled works if the works are carried out on land specified in columns (1) and (2) of Schedule 2 (acquisition of certain land) to this Order for the purpose specified in relation to that land in column (3) of that Schedule.

Power to deviate

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

Streets

Power to alter layout of streets

6.—(1) The Council may alter the layout of any street specified in columns (1) and (2) of Schedule 3 (streets subject to alteration of layout) to this Order in the manner specified in relation to that street in column (3) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), the Council may for the purpose of constructing, maintaining or using the authorised busway alter the layout of any street within the Order limits; and, without prejudice to the generality of the foregoing, the Council may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for buses or by carrying out other works for that purpose;
- (d) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than guided buses from passing along the authorised busway; and
- (e) make and maintain crossovers, sidings or passing places.

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

Power to keep apparatus in streets

7.—(1) The Council may, for the purposes of or in connection with the construction, maintenance and use of any authorised works, place and maintain in any street having a junction with or being in the vicinity of the authorised busway any work, equipment or apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act; and
- (b) the reference to any work, equipment or apparatus in a street includes a reference to any work, equipment or apparatus under, over, along or upon the street.

Power to execute street works

8.—(1) The Council may, for the purpose of exercising the powers conferred by article 7 (power to keep apparatus in streets) and the other provisions of this Order, enter upon any street within the Order limits and may execute any works required for or incidental to the exercise of those powers including, without prejudice to the generality of the foregoing, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

(2) This article is subject to paragraph 3 of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order.

Stopping up of streets

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

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets to be stopped up) to this Order (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, and which is specified in relation to it by reference to the letters and numbers shown on the deposited plans in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route is available between the commencement and termination points of the street to be stopped up pending completion of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 4 (streets to be stopped up) to this Order (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the relevant land; and for this purpose “relevant land” means any land which abuts on either side of the street to be stopped up.

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

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

(5) Where a street has been permanently stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished, and
- (b) the Council may appropriate and use for the purposes of the authorised busway so much of the site of the street as is bounded on both sides by land owned by the Council.

(6) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) This article is subject to paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order.

Temporary stopping up of streets

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

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) Without prejudice to the generality of paragraph (1), the Council may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 5 (streets to be temporarily stopped up) 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.

(4) The Council shall not exercise the powers of this article—

- (a) in relation to any street specified as mentioned in paragraph (3) without first consulting the street authority, and

(b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The provisions of the 1991 Act mentioned in paragraph (6) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Council under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the Council.

(6) The provisions of the 1991 Act referred to in paragraph (5) are—

section 54 (advance notice of certain works);

section 55 (notice of starting date of works);

section 59 (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 69 (works likely to affect other apparatus in the street);

section 76 (liability for cost of temporary traffic regulation);

section 77 (liability for cost of use of alternative route); and

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

(7) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

11. The Council may, for the purposes of the authorised works—

(a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 6 (access to works) to this Order at or about the points marked “A”; and

(b) with the approval of the highway authority (such approval not to be unreasonably withheld) form and lay out means of access or improve existing means of access at such other locations within the Order limits as the Council reasonably require for the purposes of the authorised works.

Construction and maintenance of new or altered streets

12.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 24 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 24 months from its completion and at the expiry of that period by and at the expense of the street authority.

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

(4) Any footpath to be provided under this Order shall be provided in accordance with the reasonable requirements of the highway authority and once open for use shall be maintained by and at the expense of the highway authority.

(5) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Council shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act.

(6) Nothing in this article shall have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

(7) Paragraphs (1), (2) and (4) shall not apply in relation to the construction and maintenance of Work Nos. 1A, 1B, 1C, 1E, 1K and 1L.

Construction of bridges and tunnels

13.—(1) Any bridge or tunnel to be constructed under this Order for carrying a highway over or under an authorised busway shall be constructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

(2) In constructing any new bridges the Council may do either or both of the following—

- (a) hold, use and appropriate such parts of the original bridges as they may require for the purposes of the new bridges or for any purposes ancillary to their undertaking;
- (b) take down and remove such parts of the original bridges as they do not require for those purposes.

(3) Notwithstanding article 47 (application of existing enactments), all of the powers and obligations that may be conferred or imposed upon the Council by the 1855 Act in relation to the original bridges shall cease to have effect.

(4) In this article—

“1855 Act” has the same meaning as in article 47 (application of existing enactments);

“the new bridges” means the new bridges or tunnels proposed to be constructed under this Order to carry highways over or under an authorised busway; and

“the original bridges” means the bridges or tunnels authorised to be constructed under the 1855 Act.

Agreements with street authorities

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

- (a) the construction of any new street (including any structure carrying the street over or under an authorised busway) under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under an authorised busway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order, or
- (d) the execution in the street of any of the works referred to in article 8(1) (power to execute street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question, and
- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Supplementary

Discharge of water

15.—(1) The Council may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) The Council shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The Council shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) The Council shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(5) The Council shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991⁽¹²⁾.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority;
- (b) “watercourse” includes all rivers, streams, ditches, canals, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective works to buildings

16.—(1) Subject to the following provisions of this article, the Council may at its own expense and from time to time carry out such protective works to any building within the Order limits as the Council considers to be necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the Council may enter and survey any building falling within paragraph (1) and any land belonging to it.

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

- (a) enter the building and any land belonging to it; and

⁽¹²⁾ 1991 c. 57.

- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building;
- (c) a right under paragraph (4)(a) to enter a building or land; or
- (d) a right under paragraph (4)(b) to enter land,

the Council shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of their intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 54 (arbitration).

(7) The Council shall compensate the owners and occupiers of any building or land in relation to which the powers of this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed within the vicinity of the building is first opened for use, it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,

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

(9) Nothing in this article shall relieve the Council from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;
- (b) any reference to a building within a specified distance of a work includes—
 - (i) in the case of a work under the surface of the ground, a reference to any building within the specified distance of the point on the surface below which the work is situated, and
 - (ii) where a work has not commenced, a reference to a building within the specified distance of the proposed site of the work; and
- (c) “protective works”, in relation to a building, means—
 - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
 - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

Power to survey and investigate land

- 17.—(1) The Council may for the purposes of this Order—
- (a) survey or investigate any land within the Order limits;
 - (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the Council thinks fit on any such land to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
 - (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
 - (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the Council—
- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
 - (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.
- (5) The Council shall make compensation for any damage occasioned by the exercise of the powers conferred by this article to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Town and country planning

- 18.—(1) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(13) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975(14), or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.
- (2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999(15) as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not be treated as an outline planning permission.
- (3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

(13) S.I. 1969/17.

(14) S.I. 1975/148.

(15) S.I. 1999/1892.

(4) Translink shall be regarded as a road transport undertaking for the purposes of section 262(1) of the 1990 Act (meaning of “statutory undertakers”).

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

19.—(1) The Council may acquire compulsorily—

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

and may use any land so acquired for those purposes or for any other purposes ancillary to the construction of Translink.

(2) Without prejudice to the generality of paragraph (1), the land which may be acquired compulsorily under that paragraph shall include land which is or will be required—

- (a) for use in mitigating the effect on the environment of any of the works authorised by this Order;
- (b) for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of any of the works authorised by this Order; or
- (c) for the purpose of being given in exchange for land forming part of a common, open space or fuel or field garden allotment which is acquired under paragraph (1).

(3) Nothing in this Order shall authorise the Council to acquire compulsorily—

- (a) any interest in designated land belonging to any local authority or parish council; and
- (b) any interest in the lands within the limits of deviation delineated on the deposited plans and thereon numbered 62, 63, 67 and 72 in the Borough of Luton.

(4) In this article—

“apparatus” has the same meaning as in article 7(2) (power to keep apparatus in streets) and includes apparatus belonging to a statutory utility;

“common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882⁽¹⁶⁾ and any town or village green;

“designated land” means the land delineated on the deposited plans and thereon numbered 58, 58a, 67, 81, 87, 88, 91, 94 and 97 in the District of South Bedfordshire;

“fuel or field garden allotment” means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act;

⁽¹⁶⁾ 1845 c. 118. 1846 c. 70. 1847 c. 111. 1848 c. 99. 1849 c. 83. 1851 c. 10. 1852 c. 79. 1857 c. 31. 1859 c. 43. 1868 c. 89. 1876 c. 56. 1878 c. 56. 1879 c. 37. 1882 c. 15.

“local authority” means the County Council, the Council and South Bedfordshire District Council;

“parish council” means the parish council of any parish within the area of a local authority;

“open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground; and

“statutory utility” means a licence holder within the meaning of Part 1 of the Electricity Act 1989(17), a public gas transporter within the meaning of Part 1 of the Gas Act 1986(18), a water undertaker within the meaning of the Water Industry Act 1991(19), a sewerage undertaker within Part 1 of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

(5) This article is subject to article 24 (temporary use of land for construction of works).

Application of Part 1 of the Compulsory Purchase Act 1965

20.—(1) Part 1 of the 1965 Act, insofar as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(20) applies, and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as so applied, shall have effect as if—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted, and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—
 - (i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month, or
 - (ii) in any other case, a reference to notice of 3 months.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

21.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(21) shall apply as if this Order were a compulsory purchase order.

(2) That Act, as so applied by paragraph (1), shall have effect with the following modifications.

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

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

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

(17) 1989 c. 29.

(18) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 c. 45.

(19) 1991 c. 56.

(20) 1981 c. 67.

(21) 1981 c. 66.

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

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

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

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

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

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

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

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land by article 20 (application of Part 1 of the 1965 Act).

Power to acquire new rights

22.—(1) The Council may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 19 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) to this Order), where the Council acquires a right over land under paragraph (1) the Council shall not be required to acquire a greater interest in it.

(3) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) to this Order shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(4) In relation to land to which this paragraph applies, article 19 (power to acquire land), so far as relating to the acquisition or creation of easements or other rights by virtue of paragraph (1), shall be treated as also authorising acquisition by a statutory utility in any case where the Secretary of State gives his consent in writing.

(5) Paragraph (4) applies to land within the Order limits which is or will be required for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of the works authorised by this Order; and in that paragraph “statutory utility” has the same meaning as in article 19(4) (power to acquire land).

Rights under or over streets

23.—(1) The Council may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil and air-space for those purposes or any other purpose ancillary to the construction and maintenance of Translink.

(2) The power under paragraph (1) may be exercised in relation to a street without the Council being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraphs (2) and (3) shall not apply in relation to—

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

(5) Compensation shall not be payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary possession of land

Temporary use of land for construction of works

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

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule,
- (b) remove any buildings and vegetation from that land, and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

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

(3) The Council may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 8 (land of which temporary possession may be taken) to this Order.

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

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

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Without prejudice to article 53 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) Subject to paragraphs (9) and (10), the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1).

(9) The Council shall not be precluded from acquiring new rights over any part of that land under article 22 (power to acquire new rights).

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

(11) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 20(1) (application of Part 1 of the Compulsory Purchase Act 1965).

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

Compensation

Disregard of certain interests and improvements

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

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

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

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

Supplementary

Acquisition of part of certain properties

26.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 20 (application of Part 1 of the 1965 Act)) in any case where—

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

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

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

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

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

- (a) without material detriment to the remainder of the land subject to the counter-notice, or

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

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

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

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

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

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

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

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

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

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

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

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

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

Extinction or suspension of private rights of way

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

- (a) as from the acquisition of the land by the Council, whether compulsorily or by agreement; or
- (b) on the entry on the land by the Council under section 11(1) of the 1965 Act,

whichever is the sooner.

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

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order applies.

Time limit for exercise of powers of acquisition

28.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 20 (application of Part 1 of the 1965 Act); and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 21 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The power conferred by article 24 (temporary use of land for construction of works) to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent the Council from remaining in possession of land in accordance with article 24 (temporary use of land for construction of works) after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

OPERATION OF TRANSLINK

Power to operate and use Translink

29.—(1) The Council may operate and use the authorised busway and the other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods and that system is referred to in this Order as Translink.

(2) Subject to paragraph (4) and to article 42 (power to transfer undertaking), the Council shall, for the purpose of operating Translink, have the exclusive right—

- (a) to use the authorised busway and other apparatus used for the operation of Translink, and
- (b) to occupy any part of the street in which that apparatus is situated.

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

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

Power to charge fares

30. The Council may demand, take and recover or waive such charges for carrying passengers or goods on Translink, or for any other services or facilities provided in connection with the operation of Translink, as the Council thinks fit.

Traffic control

31.—(1) The Council may, for the purposes of, or in connection with the operation of Translink, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State on or near any street along which the guided buses using Translink are run.

(2) Unless in the case they are the traffic authority, the Council—

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

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

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on or near any street along which Translink is run shall consult with the Council as to the placing of any traffic sign which would affect the operation of Translink.

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

Traffic regulation

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

- (a) establish bus lanes on the roads specified in column (2) and along the lengths and between the points specified in column (3) of Part 1 of Schedule 9 (traffic regulation orders) to this Order;
- (b) prohibit vehicular access in the manner specified in Part 2 of Schedule 9 (traffic regulation orders) to this Order on those roads specified in column (2) and at the points and as respects direction to the extent specified in column (3) of that Part of that Schedule; and
- (c) revoke any traffic regulation order in so far as it is inconsistent with any prohibition, restriction or other provision made by the Council under this paragraph.

(2) The Council shall not exercise the powers of this article unless the Council has—

- (a) given not less than 12 weeks' notice in writing of their intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may, within 28 days of its receipt of notice of the Council's intention, specify in writing.

(3) Any prohibition, restriction or other provision made by the Council under paragraph (1) shall have effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify savings

(in addition to those mentioned in Schedule 9 (traffic regulation orders) to which the prohibition, restriction or other provision is subject).

Power to fell or lop trees overhanging the authorised busway

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

- (a) from obstructing or interfering with the construction, maintenance or operation of Translink or any apparatus used for the purposes of Translink; or
- (b) from constituting a danger to passengers or other persons using Translink.

(2) In exercising the powers in paragraph (1), the Council shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(4) The following, namely—

- (a) an order under section 198(1) of the 1990 Act (tree preservation order); and
- (b) section 211(1) of the 1990 Act (which prohibits the doing in conservation areas of any act which might be prohibited by a tree preservation order),

shall not apply to any exercise of the powers in paragraph (1).

Trespass on the authorised busway

34.—(1) Any person who—

- (a) trespasses on the authorised busway; or
- (b) trespasses upon any land of the Council in dangerous proximity to the authorised busway or to any apparatus used for or in connection with the operation of Translink,

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

(2) For the purposes of this article, trespassing on the authorised busway includes causing or permitting a vehicle to be upon any part of the authorised busway which is not a public highway without permission.

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

Service subsidy agreements

35. Any service subsidy agreement relating to the operation of guided bus services operating over Translink shall be excluded from section 89(1) of the 1985 Act.

Concessionary travel

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

Registration of busway services

37. For the purposes of the application of Part 1 of the 1985 Act but subject to article 38 (substitute road services), the authorised busway shall be a road within the meaning of section 137(1) of that Act.

Substitute road services

38. The Council may provide or secure the provision by other persons of services for the carriage of passengers by road (“substitute services”) where Translink has been temporarily interrupted, curtailed or discontinued.

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

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

Obstruction of construction of Translink

39. Any person who, without reasonable excuse, obstructs another person from constructing Translink shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power to make byelaws

40.—(1) The Council may make byelaws regulating the use and operation of, and travel on, Translink, the maintenance of order on Translink and on busway premises or other facilities provided in connection with Translink and the conduct of all persons including employees of the Council while on busway premises.

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

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

(3) In paragraph (1) references to “busway premises” are references to premises of the Council used for or in connection with the operation of Translink but do not include references to the inside of a guided bus or premises within the boundary of a street.

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

(5) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (4), if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public, or hindrance to the Council in the operation of

the busway, the Council may summarily take action to obviate or remove the danger, annoyance or hindrance.

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

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

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

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

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

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

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

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

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

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

Power to contract for police services

41.—(1) The Council may enter into any agreements with a police authority and its chief officer of police for the police force maintained by that authority to provide policing services for or in connection with the authorised busway, including at any busway premises.

(2) Any such agreement may provide for—

- (a) the Council to make payment or otherwise such payment or other consideration for those policing services as the parties may agree; and
- (b) such incidental and ancillary matters as the parties consider appropriate.

(3) In this article—

- (a) “chief officer of police” means a chief officer of police within the meaning of the Police Act 1996⁽²²⁾ or the Chief Constable of the British Transport Police Force; and
- (b) “police authority” means a police authority within the meaning of that Act or the British Transport Police Authority within the meaning of the Railways and Transport Safety Act 2003⁽²³⁾.

PART 5

MISCELLANEOUS AND GENERAL

Power to transfer undertaking

42.—(1) Notwithstanding any powers that may be exercised by the Council under section 10 of the Transport Act 1968⁽²⁴⁾, the Council may with the consent of the Secretary of State enter into and carry into effect an agreement to sell, lease, charge or otherwise dispose of, on such terms and conditions as the Council thinks fit, the whole or any part of the undertaking comprised within Translink and any land held by the Council for the purpose of, or in connection with, Translink.

(2) Without prejudice to the generality of paragraph (1) a transfer agreement under paragraph (1) may provide for—

- (a) the construction, maintenance, use and operation of Translink or any part thereof by another person and as to any other matter incidental or subsidiary thereto or consequential thereon; and
- (b) the vesting in another person of all or any of the functions of the Council under this Order.

(3) A transfer agreement may be entered into so as to transfer and vest such property and functions in any other person for such period as may be specified in that agreement or for so long as the agreement remains in force and where such an agreement is entered into references in this Order to the Council shall, to the extent that the agreement so provides, have effect as references to the transferee.

(4) Without prejudice to the powers of the Council to terminate or vary a transfer agreement, a transfer agreement may specify circumstances in which that agreement shall cease to have effect before the expiry of any period specified in any such agreement.

(5) A transfer agreement may include such supplementary, incidental, transitional and consequential provisions as the Council may consider to be necessary or expedient.

(6) Without prejudice to the generality of paragraph (1), a transfer agreement may provide for the exercise by a transferee, or the Council and a transferee jointly, of all or any of the powers of the Council (whether under this Order or under any other enactment) in respect of Translink or any part thereof and for the transfer to and vesting in a transferee, or the Council and a transferee jointly, of those works or any part thereof together with the rights and obligations of the Council in relation thereto.

(7) Subject to paragraph (1), the exercise by a transferee or the Council and a transferee jointly, of any of the powers of this Order shall be subject to all statutory and contractual provisions in relation thereto as would apply if those powers were exercised by the Council alone and accordingly those provisions with any necessary modifications shall apply to the exercise of such powers by another person, or by the Council and a transferee jointly.

(22) 1996 c. 16.

(23) 2003 c. 20.

(24) 1968 c. 73.

(8) Upon expiry of any period specified in a transfer agreement in accordance with paragraph (3), or upon a transfer agreement being terminated or otherwise ceasing to have effect, the functions and property of the Council which were transferred by that agreement shall, by virtue of this paragraph but subject to the effect of any further transfer agreement entered into by the Council, be revested in the Council, but such revesting shall not make the Council subject to any of the liabilities of the transferee other than any continuing duties imposed by this Order.

(9) Notwithstanding anything in any transfer agreement, any duty arising under this Order to complete the construction of, or to maintain or operate any works in respect of which the Council's functions are transferred by a transfer agreement, together with such rights and property as are required for the discharge of that duty, shall revert to the Council in the event of the abandonment of those works or in the event that the works are not completed within 10 years of the commencement of construction of those works.

(10) Unless the transfer agreement otherwise provides, if a duty to complete the construction of, to maintain or operate any works reverts to the Council under paragraph (9), the transfer agreement shall terminate and all the functions and property of the Council which were transferred by that agreement shall be revested in the Council in accordance with paragraph (8).

(11) Within 21 days of the revesting in the Council of any property or functions pursuant to paragraph (8) or (10) or the reversion to the Council of any duty, rights or property pursuant to paragraph (9), the Council shall serve notice on the Secretary of State, providing him with particulars of the revesting or reversion concerned.

(12) For the avoidance of doubt nothing in section 15(2) of the Transport Act 1968 (restriction or alteration of charges) shall apply in relation to the operation of the Translink by any person other than the Council, but this paragraph is without prejudice to any provision with respect to charges that may be made in an agreement under paragraph (1) or (2).

(13) In this article, unless the context otherwise requires—

“functions” includes powers, duties and obligations;

“transferee” means a person to whom all or any of the property or functions of the Council have been transferred by virtue of a transfer agreement; and

“transfer agreement” means an agreement entered into under paragraph (1).

Disclosure of confidential information

43. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 16 (protective works to buildings) or 17 (power to survey and investigate land); and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret,

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

Public open space

44.—(1) The Council shall not under the powers of this Order take possession of any part of the existing open space until the Council has taken possession of so much of the replacement land as is equivalent in area to the amount of the existing open space that is required by the Council for the authorised works.

(2) Upon the Council taking possession of so much of the existing open space as is required for the authorised works that land shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) Not less than 28 days before taking up possession of the replacement land the Council shall—

- (a) publish a notice in a local newspaper circulating in the area of the replacement land; and
- (b) display a copy of the notice in a conspicuous position in or adjacent to the replacement land.

(4) A notice published and displayed pursuant to paragraph (3) shall—

- (a) identify which of either of the areas of land identified in paragraph (7)(b)(ii) or (iii) shall, together with the land identified in paragraph (7)(b)(i) be occupied as replacement land by the Council for the purposes of paragraph (1); and
- (b) specify a date, which shall be a date not less than 28 days after the date of publication of a notice under paragraph (3), after which the Council shall be at liberty to enter onto the replacement land for the purposes of paragraph (5).

(5) The Council shall lay out as replacement open space before the authorised works are first brought into public use so much of the replacement land of which possession has been taken under paragraph (1).

(6) As soon as Houghton Regis Town Council has certified that the land referred to in paragraph (3) has been laid out to its reasonable satisfaction that land shall vest in Houghton Regis Town Council subject to the like rights, trusts and incidents as attached to so much of the existing open space of which possession has been taken under paragraph (1).

(7) In this article—

- (a) “the existing open space” means the open space comprised in the land delineated on the deposited plans and thereon numbered 4, 12 and 12b in the District of South Bedfordshire and coloured green on the open space plan;
- (b) “the replacement land” means—
 - (i) the land delineated on the deposited plans and thereon numbered 9 in the District of South Bedfordshire and coloured blue on the open space plan; and either
 - (ii) the land coloured pink on the open space plan; or
 - (iii) the land coloured orange on the open space plan.
- (c) “open space plan” means the plan so headed and attached to the deposited plans.

Application of landlord and tenant law

45.—(1) This article applies to any agreement for leasing to any person the whole or any part of Translink or the right to operate the same, and any agreement entered into by the Council with any person for the construction, maintenance, use or operation of Translink, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

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

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Statutory undertakers etc.

46. The provisions of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order shall have effect.

Application of existing enactments

47.—(1) In this article—

“the 1855 Act” means the Luton, Dunstable and Welwyn Junction Railway Act 1855(25);

“the Company” means British Railways Board (Residuary) Limited;

“the former railway” means so much of the former Luton, Dunstable and Welwyn railway as was authorised by the 1855 Act and is situated within the Order limits;

“accommodation bridges” means the accommodation bridges authorised to be constructed by the 1855 Act in connection with the former railway as are within the limits of deviation for Work No. 3;

“the relevant date” means—

- (a) in relation to so much of the former railway as is owned by the Council at the date of the coming into force of this Order, that date; or
- (b) in relation to any part of the former railway which at that date is not so owned, the earlier of the date upon which the Council acquires that part or the date upon which the Council takes entry for the purpose of constructing the authorised works.

(2) Except as may be otherwise provided in this Order and subject to paragraph (3), as from the relevant date the former railway or any part thereof shall continue to be subject to all statutory and other provisions applicable to the former railway, or any part thereof, at that date (in so far as the same are still subsisting and capable of taking effect) and the Council shall to the exclusion of the Company be entitled to the benefit of, and to exercise, all rights, powers and privileges and be subject to all obligations statutory or otherwise relating to the former railway (in so far as the same are still subsisting and capable of taking effect) to the intent that the Company shall be released from all such obligations.

(3) In the event that the Council proceeds with the demolition of the accommodation bridges, all of the powers and obligations conferred or imposed upon the Council by the 1855 Act shall in relation to the accommodation bridges cease to have effect.

(4) Except as may otherwise be provided in this Order, any enactment by which the former railway was authorised shall have effect subject to the provisions of this Order.

Power of Council and County Council to make agreements

48. The Council and the County Council may enter into and carry into effect agreements with the other in respect to the construction, maintenance, use and operation of Translink or any part or parts thereof and as to any other matters incidental or subsidiary thereto or consequential thereon.

For the protection of Council and County Council in the event of transfer

49. If the powers of the Council under this Order to construct the authorised works or any part of those works are transferred to another person by virtue of a transfer agreement under article 42 (power to transfer undertaking), the provisions of Part 6 of Schedule 11 (protective provisions) to this Order shall apply for the protection of the Council and the County Council.

Protective provisions

50. The provisions of Schedule 11 (protective provisions) to this Order shall have effect.

Certification of plans etc.

51. The Council shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are, respectively, the book of reference, sections and plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of its contents.

Service of notices

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

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

(3) For the purposes of section 7 of the Interpretation Act 1978(26) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

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

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

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

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

No double recovery

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

Arbitration

54. Any difference under any provision of this Order unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to

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

be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

Ellis Harvey
Head of the Transport and Works Act Orders
Unit
Department for Transport

22nd November 2006