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STATUTORY INSTRUMENTS

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**2006 No. 3118**

**The Luton Dunstable Translink Order 2006**

**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<sup>(1)</sup>, 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.

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(1) 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(2);

“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.

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(2) 1855 c. cxlvi.

### **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<sup>(3)</sup> 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

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(3) 1978 c. 30.

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**Status:** This is the original version (as it was originally made).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

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