

2002 No. 412

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Chester Guided Busway Order 2002

Made - - - - - *21st February 2002*

Coming into force *14th March 2002*

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Whereas an application has been made to the Secretary of State for Transport, Local Government and the Regions (“the Secretary of State”), in accordance with the Transport and Works (Applications and Objections Procedure) Rules 1992**(a)** made under sections 6, 7 and 10 of the Transport and Works Act 1992**(b)** (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act;

And whereas the Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act;

And whereas the Secretary of State, having considered the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 15th February 2002;

Now, therefore, the Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Chester Guided Busway Order 2002 and shall come into force on 14th March 2002.

Interpretation

2.—(1) In this Order—

“the 1965 Act” means the Compulsory Purchase Act 1965**(c)**;

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

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

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

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

“busway system” has the meaning given in article 24 of 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;

(a) S.I. 1992/2902.

(b) 1992 c.42.

(c) 1965 c.56.

(d) 1984 c.27.

(e) 1991 c.22.

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

“the Council” means Cheshire County Council;

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

“guided bus” means a vehicle intended for the carriage of passengers 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(b) (track based with side guidance) (whether or not capable of being operated in some other way), and “guided busway” means a way providing the mode of guidance so prescribed;

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

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

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

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

“the limits of widening” means the limits of widening shown on the works plans;

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

“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;

“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 III of the 1991 Act;

“the tribunal” means the Lands Tribunal; and

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

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

(3) 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 guided busway shall be taken to be measured along the centre line of the busway.

(4) 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.

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

(6) 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(c), that definition shall be taken to include guided buses operating a service making use of the authorised guided busway.

Application of the New Roads and Street Works Act 1991

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 III of the 1991 Act (street works) as major highway works if—

(a) 1980 c.66.
 (b) S.I. 1992/3231.
 (c) 1981 c.14.

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

(2) In Part III 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 sub-paragraph (1), be construed as references to the Council.

PART II

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, the scheduled works shall be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the deposited sections.

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

- (a) stopping places;
- (b) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised guided busway;
- (c) works for the alteration or demolition of any building or structure;
- (d) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (e) works to alter the position of any street furniture or apparatus including mains, sewers, drains and cables; and
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works, including works for the re-siting or protection of any footpath or cycle route which may (upon construction of the authorised works) have been constructed along the course of the former Mickle Trafford to Shotton railway, and other works for the benefit or protection of premises affected by the authorised works.

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

(5) 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, it 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 it and such other person.

(6) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works within the limits of land to be acquired.

Power to deviate

5. In constructing or maintaining any scheduled work, the Council may—

- (a) except in relation to Work No. 1B, deviate laterally from the lines or situations shown on the works plans within the limits of deviation for that work;
- (b) in relation to Work No. 1B, construct the works within the limits of widening for that work; and

- (c) 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 in the City of Chester specified in column (1) of Schedule 3 to this Order in the manner specified in relation to that street in column (2) of that Schedule.

(2) Without prejudice to the powers conferred by article 4 or paragraph (1) but subject to paragraph (3), the Council may for the purpose of constructing, maintaining or using the authorised guided busway alter the layout of any street within the limits of land to be acquired; 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; and
- (d) carry out works for the provision or alteration of parking places and bus lay-bys.

(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 the authorised works, place and maintain in any street within the limits of land to be acquired any work, equipment or apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part III 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. The Council may, for the purpose of exercising the powers conferred by article 7 and the other provisions of this Order, enter upon any street within the limits of land to be acquired and 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.

Temporary stopping up of streets

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

- (a) divert the traffic from the street, and
- (b) subject to paragraph (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) The Council shall not exercise the powers of this article in relation to any street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(4) In relation to any stopping up, alteration or diversion of a street by the Council under the powers conferred by this article, the provisions of the 1991 Act mentioned in paragraph (5), and any regulations made, or code of practice issued or approved under those provisions, shall apply (with the necessary modifications) 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.

- (5) The provisions of the 1991 Act referred to in paragraph (4) 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.

Maintenance of altered streets

10.—(1) Where a street is altered under this Order, the altered 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 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(2) 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 III of that Act.

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

Agreements with street authorities

- 11.**—(1) A street authority and the Council may enter into agreements with respect to—
- (a) any stopping up, alteration or diversion of a street under the powers conferred by this Order; and
 - (b) the execution in the street of any of the works referred to in article 8.
- (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.

Supplemental powers

Discharge of water

12.—(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 on any land within the limits of land to be acquired lay down, take up and alter pipes and make openings into, and connections with, the watercourse, 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 take such steps as are reasonably practicable to secure that any water discharged 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.

(5) 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(a).

(6) 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, 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.

Power to survey and investigate land

13.—(1) The Council may for the purposes of this Order—

- (a) survey or investigate any land within the limits of land to be acquired;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the Council thinks fit on the land described in sub-paragraph (a) (in this particular article referred to as “the land”) to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out archaeological investigations on the land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of the land and making of trial holes under 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 I of the Land Compensation Act 1961(b).

Planning permission : supplementary matters

14.—(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(c) (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(d), or as incorporated in any tree preservation order), any direction under section 90(2A) of the Town and Country Planning Act 1990(e) 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 III of that Act for the purposes of that Part.

(a) 1991 c.57.

(b) 1961 c.33.

(c) S.I. 1969/17.

(d) S.I. 1975/148.

(e) 1990 c.8.

(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^(a) 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 Town and Country Planning Act 1990 deeming planning permission to be granted in relation to 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 Town and Country Planning Act 1990 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).

PART III

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

15.—(1) Subject to paragraph (2) of this article and paragraph 3 of Part VII of Schedule 6 to this Order, the Council may acquire compulsorily—

- (a) so much of the land within the limits of land to be acquired and described in the book of reference as may be required for or in connection with the authorised works; and
- (b) without prejudice to the generality of sub-paragraph (a), so much of the land specified in column (1) of Schedule 2 to this Order (being land shown on the land plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (2) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to the busway system.

(2) This article does not authorise the acquisition of the land in the City of Chester comprising plot nos. 14 and 23 on the land plans.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

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

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

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

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

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession), and
- (b) published in the London Gazette and in one or more local newspapers circulating in the locality of the authorised works.”

(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, subsections (5) and (6) shall be omitted and at the end there shall be inserted—

“(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.”

^(a) S.I. 1999/1892.

^(b) 1981 c.66.

(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 one or more local newspapers circulating in the locality of the authorised works”; 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)”**(a)** shall be omitted.

(8) References to the Compulsory Purchase Act 1965 shall be construed as references to that Act as applied to the acquisition of land under article 17.

Application of Part I of the Compulsory Purchase Act 1965

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

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

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

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

Powers to acquire new rights

18.—(1) The Council may compulsorily acquire such easements or other rights over any land referred to in paragraph (1) of article 15 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 4 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 4 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.

Rights in streets

19.—(1) The Council may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the limits of land to be acquired as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose connected with or ancillary to the busway system.

(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) 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 Council acquiring any part of that person’s interest in the land and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

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

(a) 1981 c.67.

- (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) For the avoidance of doubt, the powers given by articles 6, 7 and 8 shall, where their exercise requires appropriation and use of sub-soil or air-space under this article or the acquisition of land or a right in land, be limited to the limits of land to be acquired.

Compensation

Disregard of certain interests and improvements

20.—(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

21.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 17) in any case where—

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

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the 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 the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the 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 factory 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 of private rights of way

22.—(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 sooner.

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

(3) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990 (extinguishment of rights of statutory undertakers etc.) applies.

Time limit for exercise of powers of acquisition

23. 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 I of the 1965 Act, as applied to the acquisition of land by article 17; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 16.

PART IV

OPERATION OF BUSWAY SYSTEM

Power to operate and use busway system

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

(2) Subject to paragraph (4) and to article 32, the Council shall, for the purpose of operating the authorised guided busway, have the exclusive right to use the authorised guided busway and any apparatus used for the operation of that busway.

(3) Any person who, without the consent of the Council or other reasonable excuse, uses the authorised guided busway 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.

Maintenance of approved works etc.

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

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

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

Power to charge fares

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

Traffic signs

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

(2) Unless in any case it is the traffic authority, the Council—

(a) shall consult 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 the busway system is run shall consult with the Council as to the placing of any traffic sign which would affect the operation of the busway system.

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

Power to fell or lop trees

28.—(1) The council may fell or lop any tree or shrub near any part of the authorised guided busway (or land proposed to be used for that 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 the authorised guided busway or any apparatus used for the purposes of the authorised guided busway; or
- (b) from constituting a danger to passengers or other persons using the authorised guided busway.

(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 I of the Land Compensation Act 1961.

(4) The following, namely—

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

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

Obstruction of construction of busway

29. Any person who, without reasonable excuse, obstructs another person from constructing the authorised guided busway or any other authorised work under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Power to make byelaws

30.—(1) The Council may make byelaws regulating the use and operation of, and travel on, the busway system, the maintenance of order on the busway system (including busway premises or other facilities provided in connection with the busway system) and the conduct of all persons including employees of the Council 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 the busway system, the payment of fares and charges and the evasion of payment of fares and charges;
- (b) with respect to interference with, or obstruction of, the operation of the busway system or other facilities provided in connection with the busway system including provision for the recovery of the costs involved in removing such an obstruction or interference;
- (c) with respect to the prevention of nuisances or trespass on the busway system;
- (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 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 the authorised guided busway or on busway premises.

(3) In paragraphs (1) and (2) references to “busway premises” are references to premises of the Council used for or in connection with the operation of the busway system and include car parks intended to be used in connection with the busway system but do not include references to the inside of a guided bus or premises within the boundary of a highway.

(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 system, 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 byelaw 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 its intention to apply for the byelaws to be confirmed and of the place at which and the time during which a copy of the byelaws will be open to public inspection; and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(8) For at least 24 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws shall be kept at the principal office of the 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

31.—(1) Agreements may be made—

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

for making available to the Council for the purposes of the operation of its busway system the services of members of the police force or, as the case may be, members of the British Transport

Police Force on such terms as to payment or otherwise, and subject to such conditions, as the parties to them think fit.

(2) In this article—

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

Powers of disposal, agreements for operation, etc.

32.—(1) The Council may, with the consent of the Secretary of State, sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the busway system or the right to operate the busway system under this Order.

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

(3) Any agreement under this article may provide (inter alia) for the exercise of the powers of the Council under this Order by any other person and for the transfer to any person of the busway system or any part or parts thereof together with the rights and obligations of the Council in relation thereto.

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

(5) For the avoidance of doubt it is hereby declared that nothing in section 15(2) of the Transport Act 1968(c) (restriction on alteration of charges) shall apply in relation to the operation of the busway system 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 this article.

Application of Landlord and Tenant law

33.—(1) This article applies to any agreement for leasing to any person the whole or any part of the busway system 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 the busway system, or any part of that system, 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 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

(a) 1964 c.48.

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

(c) 1968 c.73.

- (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.

Town and country planning

34. The busway system shall be regarded as a road transport undertaking for the purposes of section 262(1) of the Town and Country Planning Act 1990 (meaning of “statutory undertakers”).

PART V

MISCELLANEOUS AND GENERAL

Statutory undertakers etc.

35. The provisions of Schedule 5 to this Order shall have effect.

Protection of interests

36. The provisions of Schedule 6 to this Order shall have effect.

Application of existing enactments

37.—(1) In this article—

“the Board” means the British Railways Board;

“the former railway” means so much of the former Mickle Trafford to Shotton railway as is situated within the limits of deviation or the limits of land to be acquired;

“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, 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 Board 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 Board as the case may be, shall be released from all such obligations.

(3) Section 31 (Provisions in relation to certain works within the City of Chester) of the Chester and West Cheshire Junction Railway Act 1865^(a) shall cease to apply to the former railway.

(4) Any enactment by which the former railway was authorised shall have effect subject to the provisions of this Order.

Crown rights

38.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular, and without prejudice to the generality of the

^(a) 1865 c.cxcii.

foregoing, nothing in this Order shall authorise the Council or any other person to take, use, enter upon or in any manner interfere with any land or hereditament or any rights of whatsoever description belonging to Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners.

(2) Consent under this article may be given unconditionally or subject to such terms or conditions as shall be considered necessary or appropriate.

Minerals

39.—(1) Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 (exception of minerals from compulsory purchase and regulation of the working of mines or minerals underlying an authorised undertaking) shall have effect in relation to land to which article 15 applies as if it were comprised in a compulsory purchase order providing for the incorporation with that order of those parts of that Schedule.

(2) In their application by virtue of paragraph (1), Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 shall have effect with the following modifications—

- (a) references to the acquiring authority shall be construed as references to the Council; and
- (b) references to the undertaking shall be construed as references to the undertaking which the Council is authorised by this Order to carry on.

Certification of plans etc.

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

Service of notices

41.—(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 is 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^(a) 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

42. 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.

(a) 1978 c.30.

Disclosure of confidential information

43. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 13; 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.

Arbitration

44. Where under this Order any difference (other than a difference to which the provisions of the 1965 Act apply) is to be determined by or referred to arbitration, then, unless otherwise provided, the difference shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other), by the President of the Institution of Civil Engineers.

Withholding of consent

45. Where it is provided in this Order that any consent or approval is not to be unreasonably withheld, any dispute as to whether it is unreasonably withheld or as to any conditions subject to which it is given shall be determined by arbitration.

Signed by authority of the Secretary of State for Transport,
Local Government and the Regions

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

21st February 2002

SCHEDULES

SCHEDULE 1

Article 4

SCHEDULED WORKS

In the County of Cheshire, City of Chester—

- | | |
|-------------|---|
| Work No. 1 | A guided busway (505 metres in length), commencing at the junction of Northgate Avenue with the existing access to Northgate Avenue car park, passing eastwards, then north-eastwards and northwards and terminating at a point 30 metres south-west of the bridge carrying the former Mickle Trafford to Shotton railway over the Birkenhead to Chester railway. |
| Work No. 1A | Alteration of Victoria Road commencing at its junction with St Anne's Street and terminating at a junction to be formed with St Oswald's Way, including an alteration of levels. |

- Work No. 1B A widening of the eastern side of Victoria Road, and the south-eastern side of Northgate Avenue between the junction of Victoria Road with St Oswald's Way and the junction of Northgate Avenue with Wroxham Close, including the formation of new access to Northgate Arena from Northgate Avenue at point Y.
- Work No. 2 A guided busway (2,169 metres in length), commencing by a junction with Work No. 1 at its termination, passing eastwards along the course of the former Mickle Trafford to Shotton railway, over the existing bridges carrying the former railway over the Birkenhead to Chester Railway and Ermine Road and under the existing bridges carrying Newton Lane, Fairfield Road, Mannings Lane South and Greenfield Lane over the former railway and terminating at a point 140 metres north-east of the last mentioned bridge.
- Work No. 2A An access road commencing by a junction with Brook Lane 10 metres south-west of the junction of that road with Newry Court and terminating at a point 70 metres east of its point of commencement.
- Work No. 2B A new cycleway/footpath bridge over the Birkenhead to Chester railway.
- Work No. 2C A new cycleway/footpath bridge over Ermine Road.
- Work No. 2D Alteration of part of the bridge carrying Newton Lane over the former railway.
- Work No. 2E An access road, commencing by a junction with Newton Lane 90 metres north of the bridge carrying that road over the former Mickle Trafford to Shotton railway and terminating at a point on the said former railway 15 metres north-east of the said bridge.
- Work No. 2F Alteration of part of the bridge carrying Mannings Lane South over the former Mickle Trafford to Shotton railway.
- Work No. 3 A guided busway (430 metres in length), commencing by a junction with Work No. 2 at its termination, passing northwards then north-eastwards and terminating in an interchange terminus and car park at a point 310 metres north-east of its commencement, including the said interchange and car park and the formation of vehicular access to the A56/M53 roundabout (Work No. 3B) at point A.
- Work No. 3A A realignment of the northbound slip road of the M53 motorway commencing by a junction with Work No. 3B and terminating at a point 55 metres north of its commencement.
- Work No. 3B A realignment of part of the A56/M53 roundabout.
- Work No. 3C A realignment of the northbound slip road of the A55 commencing by a junction with Work No. 3B and terminating at a point 60 metres south west of its commencement.

SCHEDULE 2

Article 15(1)(b)

ACQUISITION OF LAND

(1) Number shown on land plans	(2) Purpose for which land may be acquired
4 (part) and 5 (part)	Alteration of kerblines and footways.
18, 19 and 20 (part)	Construction and maintenance of drainage works for the authorised guided busway.

SCHEDULE 3

Article 6(1)

STREETS SUBJECT TO ALTERATION OF LAYOUT

(1) Street subject to alteration of layout	(2) Description of alteration
St Oswald's Way	Kerblines to be realigned between points B1 and B2 (central reservation). Kerblines to be realigned between points B3 and B4 and vehicular access to be formed at point W (central reservation).
St Oswald's Way/Victoria Road	Kerblines to be set forward between points B5 and B6. Kerblines to be realigned between points B7, B8 and B9. Kerblines and footway to be formed between points B10, B11 and B12.
St Oswald's Way/Victoria Road/Northgate Avenue	Kerblines and footway to be realigned between points B13 and B14 including the closure of access to Northgate Arena at point X.
Northgate Avenue	Kerblines and footway to be set back between points B15 and B16 and points B17 and B18.

SCHEDULE 4

Article 18

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE
ENACTMENTS FOR CREATION OF NEW RIGHTS*Compensation enactments*

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973^(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”;

^(a) 1973 c.26.

- (b) for the word “severance” there shall be substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

Adaptation of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part I of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (provision as to divided land) there shall be substituted the following—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Chester Guided Busway Order 2002 (“the Order”) shall, in relation to that person cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey),
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity),
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners), and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 5

Article 35

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC

Apparatus of statutory undertakers etc. on land acquired

1. Subject to the following provisions of this Schedule, sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land which has been acquired under this Order, or which is held by the Council and is appropriated or used (or about to be used) by it for the purposes of this Order or for purposes connected therewith; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282 which provide for the payment of compensation) shall have effect accordingly.

2. In the provisions of the 1990 Act, as applied by paragraph 1—

- (a) references to the appropriate Minister are references to the Secretary of State;
- (b) references to the purpose of carrying out any development with a view to which land was acquired or appropriated are references to the purpose of carrying out the authorised works; and
- (c) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired, appropriated or used as mentioned in paragraph 1.

3. Where any apparatus of public utility undertakers or of a public telecommunications operator is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by paragraph 1, any person who is the owner or occupier of

premises to which a supply was given from that apparatus shall be entitled to recover from the Council compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

4. Paragraph 3 shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the Council compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

5. The provisions of the 1990 Act mentioned in paragraph 1, as applied by that paragraph, shall not have effect in relation to apparatus as respects which Part III of the 1991 Act applies (including that Part as applied by article 3).

6. In this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990;

“public telecommunications operator” means—

- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984^(a) applies, to run a public telecommunications system; or
- (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; and

“public utility undertakers” has the same meaning as in the Highways Act 1980.

SCHEDULE 6

Article 36

PROTECTIVE PROVISIONS

PART I

GENERAL

Application of Schedule 6

1. The provisions of this Schedule shall have effect for the protection of each of the bodies referred to in Parts II to VII unless, in the case of any such body, it is otherwise agreed in writing between the Council and the body concerned.

Arbitration

2. Any difference arising between the Council and any body referred to in this Schedule (other than a difference as to the meaning or construction of this Schedule) shall be referred to and settled by arbitration in accordance with article 44.

PART II

PROTECTION FOR RAILTRACK PLC

Interpretation

1. In this Part of this Schedule—

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

“the engineer” means an engineer appointed by Railtrack PLC for the purpose in question;

(a) 1984 c.12.

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

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

“railway property” means any railway belonging to Railtrack PLC and any works, apparatus and equipment belonging to Railtrack connected with any such railway and includes any land held or used by Railtrack for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

Powers requiring consent of Railtrack PLC

2.—(1) The Council shall not under the powers conferred by this Order acquire or use, or acquire new rights over, any railway property unless such acquisition or use is with the consent of Railtrack PLC.

(2) The Council shall not exercise the powers conferred by article 13 or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Railtrack PLC.

(3) The Council shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Railtrack PLC.

(4) The Council shall not exercise the powers conferred by section 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 5 to this Order, in relation to any right of access of Railtrack to railway property, but such right of access may be diverted with the consent of Railtrack PLC.

(5) Where Railtrack PLC is asked to give its consent pursuant to sub-paragraph (1), (2), (3) or (4) such consent shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

Fencing

3. Where so required by the engineer the Council shall to the reasonable satisfaction of the engineer fence off any specified work or take such other steps as the engineer may require to be taken for the purpose of separating that work from railway property, whether on a temporary or permanent basis or both.

Approval of plans

4.—(1) The Council shall before commencing construction of any specified work supply to Railtrack PLC proper and sufficient plans of that work for the reasonable approval of the engineer and shall not commence such construction of the specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 56 days after such plans have been supplied to Railtrack PLC the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) If within 56 days after such plans have been supplied to Railtrack PLC, Railtrack PLC gives notice to the Council that Railtrack PLC desires itself to construct any part of the specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Railtrack PLC then, if the Council desires such part of the specified work to be constructed, Railtrack PLC shall construct it (together with any adjoining part of the specified work which the Council reasonably requires to be constructed in one operation with those works) with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (where appropriate and if given) of the Council.

(a) 1985 c.6.

(4) Upon signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of a specified work to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Railtrack PLC or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work), and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack PLC or by the Council, if Railtrack PLC so desires, with all reasonable dispatch and the Council shall not commence the construction of the specified work until the engineer has notified the Council that the protective works have been completed to his reasonable satisfaction.

- (5) (a) For the avoidance of doubt, and subject to sub-paragraph (b), the protective works which the engineer may specify upon signifying his approval of plans of such of the specified works as are within 15 metres of, or may in any way adversely affect, the existing Ballast Sidings at Chester North Junction belonging to Railtrack may include works for the relocation of those sidings on land made available to the Council by Railtrack.
- (b) The Council shall not be obliged to relocate the sidings referred to in sub-paragraph (a) unless the land required for the purpose has been made available by Railtrack.
- (c) The work required to relocate the sidings shall be carried out by the Council as agent for Railtrack, and Railtrack shall own the relocated sidings when constructed.

Construction of specified works

5.—(1) Any specified work (together with any protective works specified by the engineer pursuant to paragraph 4(4)) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Railtrack PLC or the traffic thereon;

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of a specified work, the Council shall, notwithstanding any such approval, make good such damage and shall pay to Railtrack PLC all reasonable expenses to which Railtrack may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(2) Nothing in this paragraph shall impose any liability on the Council with respect to any damage, costs, expenses or loss attributable to the negligence of Railtrack or its servants, contractors or agents.

Access

6. The Council shall—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

7. Railtrack PLC shall at all times afford reasonable facilities to the Council and its agents for access to any works carried out by Railtrack PLC under this Part of this Schedule during their construction and shall supply the Council with such information as it may reasonably require with regard to such works or the method of constructing them.

Alterations, etc. to railway property

8.—(1) If during the construction of a specified work or during a period of 12 months after the completion of that work any alterations or additions, either permanent or temporary, to

railway property are reasonably necessary in consequence of the construction of a specified work in order to ensure the safety of railway property or the continued safe and efficient operation of the railways of Railtrack PLC, and Railtrack PLC gives to the Council reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the Council shall pay to Railtrack PLC the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 9(a), provide such details of the formula by which those sums have been calculated as the Council may reasonably require.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the Council to Railtrack PLC under this paragraph.

Repayment of Railtrack's fees etc.

9. The Council shall repay to Railtrack PLC all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of a specified work on behalf of the Council as provided by paragraph 4(3) or in constructing any protective works under the provisions of paragraph 4(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works; and
- (b) in respect of the approval by the engineer of plans submitted by the Council and the supervision by him of the construction of a specified work and any protective works.

Maintenance of specified works

10. If at any time after the completion of a specified work, not being a work vested in Railtrack, Railtrack PLC gives notice to the Council informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of railway property, the Council shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified work in such state of maintenance as not adversely to affect the operation of railway property.

Illuminated signs etc.

11. The Council shall not provide any illumination or illuminated sign on or in connection with a specified work in the vicinity of any railway belonging to Railtrack PLC unless it shall have first consulted Railtrack PLC and it shall comply with Railtrack PLC's reasonable requirements for preventing confusion between such illumination or illuminated sign and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

Alterations, etc. to railway property : repayment of additional expenses

12. Any additional expenses which Railtrack may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Council, be repaid by the Council to Railtrack PLC.

Indemnity

13.—(1) The Council shall be responsible for and make good to Railtrack PLC all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Railtrack—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the Council or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the Council shall indemnify Railtrack from and against all claims and demands arising out of or in connection with any specified work or any such failure, act or omission as aforesaid; and the

fact that any act or thing may have been done by Railtrack on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Railtrack or of any person in its employ or of its contractors or agents) excuse the Council from any liability under the provisions of this paragraph.

(2) Railtrack PLC shall give the Council reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Council.

(3) The sums payable by the Council under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Railtrack PLC and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Railtrack PLC shall promptly pay to each train operator the amount of any sums which Railtrack PLC receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Railtrack PLC the relevant costs shall, in the event of default, be enforceable directly by the train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Railtrack’s rail network as a result of the construction, maintenance or failure of any specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

14. In the assessment of any sums payable under this part of this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Railtrack if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Council under this part of this Schedule or increasing the sums so payable.

15. The Council and Railtrack PLC may enter into, and carry into effect, agreements for the transfer to the Council of—

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

PART III

PROTECTION FOR ELECTRICITY AND GAS UNDERTAKERS

Interpretation

1.—(1) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989^(a)) belonging to or maintained by that undertaker; and
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a public gas transporter for the purposes of the conveyance of gas;

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; but the provisions of paragraphs 3 to 11 do not apply to apparatus in

(a) 1989 c.29.

respect of which the relations between the Council and the undertakers are regulated by the provisions of Part III of the 1991 Act;

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

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“plans” includes sections and method statements; and

“undertaker” means any of the following, namely, a public electricity supplier within the meaning of Part I of the Electricity Act 1989 and a public gas transporter within the meaning of Part I of the Gas Act 1986(a); and, in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

(2) The provisions of Schedule 5 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

Temporarily stopped up streets etc. : maintenance of apparatus

2. Notwithstanding the temporary stopping up or diversion of any highway pursuant to article 9, an undertaker shall be at liberty at all times to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain or use any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of apparatus

3. Notwithstanding anything in this Order or shown on the land plans the Council shall not acquire any apparatus otherwise than by agreement.

Removal of apparatus : alternative apparatus

4.—(1) If, in the exercise of the powers of this Order, the Council acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule, and any right of an undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Council requires the removal of any apparatus placed in that land, it shall give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers of this Order an undertaker reasonably needs to remove any of its apparatus) the Council shall, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Council and thereafter for the retention and maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the Council, or the Council is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question shall, on receipt of a written notice to that effect from the Council, forthwith use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) The obligation imposed by sub-paragraph (3) shall not extend to the exercise by the undertaker of any power to acquire compulsorily any land or rights in land.

(5) Any alternative apparatus to be constructed in land of the Council under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Council or in default of agreement settled by arbitration pursuant to article 44.

(6) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the

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

grant to the undertaker of any facilities and rights as are referred to in sub-paragraph (2) or (3), proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Council to be removed under the provisions of this Part of this Schedule.

(7) Notwithstanding anything in sub-paragraph (6), if the Council gives notice in writing to the undertaker in question that it desires itself to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of the Council, that work may, with the prior written consent of the undertaker (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus), in lieu of being executed by the undertaker, be executed by the Council with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(8) Nothing in sub-paragraph (7) shall authorise the Council to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Council affords to an undertaker facilities and rights for the construction and maintenance in land of the Council of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Council and the undertaker in question or in default of agreement settled by arbitration in accordance with article 44.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any authorised guided busway of the Council or adjacent to any other of the authorised works, the arbitrator shall—

- (a) give effect to all reasonable requirements of the Council for ensuring the safety and efficient operation of the busway system and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Council or the traffic on the busway system; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to any terms and conditions applicable to the apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the Council in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the Council to that undertaker as appears to him to be reasonable having regard to all the circumstances of the particular case.

Protection of apparatus

6.—(1) Not less than 56 days before commencing the execution of any works of the type referred to in paragraph 4(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the Council under paragraph 4(2), the Council shall submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access thereto, and the undertaker shall be entitled by its officer to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are received by it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the Council, reasonably requires the removal of any apparatus and gives written notice to the Council of that requirement, the foregoing provisions of this Part of this Schedule shall apply as if the removal of the apparatus had been required by the Council under paragraph 4(2).

(5) Nothing in this paragraph shall preclude the Council from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The Council shall not be required to comply with sub-paragraph (1) in a case of emergency, but in that case it shall give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Stopped up highways : access to apparatus

7. Where, by reason of this Order, any part of any highway in which any apparatus is situated ceases to be part of a highway an undertaker may exercise the same rights of access to such apparatus as is enjoyed immediately before the coming into force of this Order, but nothing in this paragraph shall affect any right of the Council or of the undertaker to require removal of such apparatus under this Part of this Schedule or the power of the Council to execute works in accordance with paragraph 6.

Repayment of undertakers' expenses

8.—(1) Subject to the following provisions of this paragraph, the Council shall repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 4(2).

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in pursuance of the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Council or, in default of agreement, is not determined by arbitration to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

Indemnity

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works as are referred to in paragraph 4(2) any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the Council shall—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) indemnify the undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on the Council with respect to any damage or interruption to the extent that it is attributable to the act, negligence or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker shall give the Council reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the Council which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Payment for redundant apparatus

10.—(1) Where, by reason of the stopping up of any highway pursuant to this Order, any apparatus belonging to an undertaker and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, the Council shall, subject to sub-paragraph (2), pay to that undertaker the value of such apparatus (which shall then become the property of the Council) and the reasonable cost of and any costs incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason of such apparatus being so rendered derelict or unnecessary.

(2) The Council shall not under the provisions of this paragraph be required to pay to an undertaker the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertaker, other apparatus has at the expense of the Council been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary.

Existing enactments and agreements

11. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Council and an undertaker in respect of any apparatus laid or erected in land belonging to the Council on the coming into force of this Order.

PART IV

PROTECTION FOR SEWERAGE UNDERTAKERS

Interpretation

1.—(1) In this Part of this Schedule—

“construction” includes placing, alteration and reconstruction; and “construct” and “constructed” shall be construed accordingly;

“plans” includes sections, specifications and method statements;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991^(a), and includes a disposal main within the meaning of that Act and any manholes, ventilating shafts, pumps or accessories forming part of any such sewer; but the provisions of paragraphs 4 to 9 do not apply to any sewer in respect of which relations between the Council and the undertaker are regulated by the provisions of Part III of the 1991 Act;

“specified work” means so much of any of the authorised works as is situated over, or within 15 metres of, or (wherever situated) imposes any load directly upon, any sewer; and

“the undertaker” means the sewerage undertaker for the area within which the authorised works are situated or whose sewers are affected by those works.

(a) 1991 c.56.

(2) The provisions of Schedule 5 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

Temporarily stopped up streets etc.: maintenance of sewers

2. Notwithstanding the temporary stopping up or diversion of any highway pursuant to article 9, the undertaker shall be at liberty at all times to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain, protect or use any sewer which at the time of the stopping up or diversion was in that highway.

Acquisition of sewers

3. Notwithstanding anything in this Order or shown on the deposited plans the Council shall not acquire any sewer otherwise than by agreement.

Protection of sewers

4.—(1) Before commencing the construction or renewal of any specified work, and in the case of any temporary work its removal, the Council shall submit to the undertaker plans for those works as described in sub-paragraph (2) and shall not commence that work until the undertaker has signified in writing its approval of those plans.

(2) The plans to be submitted to the undertaker shall be detailed plans describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of all sewers of the undertaker within 15 metres of that work or upon which the specified work will impose a load, and shall include detailed drawings of every alteration which the Council may propose to any such sewers.

(3) For the purpose of the preparation of the plans, and subject to such reasonable requirements as it may specify, the undertaker shall permit the Council to have access to plans in its possession and to any of its sewers.

(4) Any approval of the undertaker required under this paragraph—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5),
- (b) shall not be unreasonably withheld, and
- (c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(5) The undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing the sewerage system of the undertaker against interference or risk of damage or providing or securing proper and convenient means of access to any sewer.

5.—(1) The specified work shall be constructed or, in the case of any temporary work removed, in accordance with the plans approved, or deemed to have been approved, or settled by arbitration, as the same may be amended from time to time by agreement between the Council and the undertaker; and in the construction or removal of the specified work the Council shall comply with all reasonable requirements of the undertaker and shall provide new, altered or substituted sewers or works for the protection of any sewers of the undertaker, in such manner as the undertaker may reasonably require, by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work.

(2) All works under sub-paragraph (1), for the provision of new, altered or substituted sewers or the protection of any sewers of the undertaker shall, where so required by the undertaker, be constructed by the undertaker or under the supervision (if given) of an officer of the undertaker duly appointed for the purpose, and all costs, charges and expenses reasonably incurred by the undertaker in the construction of such works, or in the preparation or examination of plans or designs of such works, or in such supervision, shall be paid to the undertaker by the Council.

(3) When works for the provision of any such new, altered or substituted sewer, or any such protective work forming part of any such new, altered or substituted sewer or any existing sewer

of the undertaker, have been completed under this Part of this Schedule to the reasonable satisfaction of the undertaker, they shall be vested in and shall become maintainable by the undertaker.

6. As soon as reasonably practicable after the completion of the construction of the specified works, the Council shall deliver to the undertaker a plan and section showing the position and level of those works as constructed and all new, altered or substituted works provided under this Part of this Schedule.

Repayment of undertaker's expenses

7. Subject to the following provisions of this paragraph, the Council shall be liable to make good, or, if the undertaker so decides, to repay to the undertaker any expense reasonably incurred by the undertaker in making good, all injury or damage to any sewers, drains or works vested in the undertaker (except in so far as such sewer, drain or work is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken in relation to any specified work and the provision of any new, altered or substituted sewer or any protective work under this Part of this Schedule and shall pay to the undertaker any additional expense to which it may be put in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work.

Indemnity

8.—(1) The Council shall indemnify the undertaker against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the undertaker which the undertaker may incur or have to pay or which it may sustain in consequence of the construction of any specified work or of the failure or want of repair of any specified work or any subsidence caused by the construction of any specified work or in consequence of any act or omission of the Council, its contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered or substituted sewer or any protective work.

(2) The undertaker shall give to the Council reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement in writing of the Council.

(3) If in pursuance of the provisions of this Part of this Schedule—

- (a) a sewer of better type, of greater capacity or of greater dimensions is placed in substitution for an existing sewer of worse type, of smaller capacity or of smaller dimensions, except where this is due to using the nearest currently available type; or
- (b) a sewer (whether an existing sewer or a sewer substituted for an existing sewer) is placed at a depth greater than the depth at which the existing sewer was,

and the placing of a sewer of that type or capacity or of those dimensions or the placing of a sewer at that depth, as the case may be, is not agreed by the Council or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the sewer placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertaker by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3) an extension of a sewer to a length greater than the length of an existing sewer shall not be treated as a placing of a sewer of greater dimensions than those of the existing sewer.

(5) An amount which apart from this sub-paragraph would be payable to the undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant, to sub-paragraph (3)) shall, if the works involve the placing of a sewer provided in substitution for a sewer placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the sewer in the ordinary course, be reduced by the amount which represents that benefit.

9. Nothing in paragraph 7 or 8 shall impose any liability on the Council in respect of any damage to the extent that it is attributable to the act, neglect or default of the undertaker, its officers, servants, or, if not the Council, its contractors or agents.

PART V
PROTECTION FOR TRAIN OPERATORS

Interpretation

1. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction;

“railway property” has the same meaning as in Part II of this Schedule;

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a train operator as a consequence of any restriction of the use of Railtrack’s railway network as a result of—

- (a) the construction, maintenance or failure of a specified work; or
- (b) by reason of any act or omission of the Council or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

“specified work” means, as respects any train operator, so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property comprising track and related facilities which that operator has permission to use for the purpose of the operation of trains; and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

Indemnity

2.—(1) The Council shall be responsible for and make good to any train operator all relevant costs which may be occasioned to or reasonably incurred by that train operator.

(2) The train operator shall give the Council reasonable notice of any claim or demand relating to relevant costs and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Council, which shall not be unreasonably withheld.

3. In the assessment of any sums payable under this Part of this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by a train operator if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Council under paragraph 2(1) or increasing the sums so payable.

PART VI
PROTECTION FOR THE ENVIRONMENT AGENCY

Interpretation

1. In this Part of this Schedule—

“the Agency” means the Environment Agency; and

“plans” includes sections, drawings, specifications, calculations and descriptions.

Application of Water Resources Act 1991 and Land Drainage Act 1991

2. Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991 or any byelaws made under that Act or the Land Drainage Act 1991(a) in relation to anything done under or in pursuance of this Order.

Obstructions in rivers and watercourses: approval of plans

3. Before carrying out any works under the powers of this Order involving the erection or raising of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991 or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow of any such

(a) 1991 c.59.

watercourse in, under or through any land held for the purposes of or in connection with the authorised works, the Council shall furnish to the Agency proper and sufficient plans of such works for the approval of the Agency and shall not carry out such works until those plans have been approved in writing by the Agency.

4. The approval of plans furnished under paragraph 3 shall not be unreasonably withheld and if, within 56 days from the day that the plans are received by the Agency, the Agency does not indicate in writing its disapproval and the grounds of its disapproval, it shall be deemed to have approved the plans as received.

Maintenance of structures in watercourses

5. Any culvert or any structure designed to contain or divert the flow of any watercourse situated within any land held for the purposes of or in connection with the authorised works, whether constructed under the powers of this Order or in existence prior to the making of this Order, shall be maintained by the Council in good repair and condition and free from obstruction.

6. Nothing in paragraph 5 shall have the effect of requiring the Council to carry out works of maintenance in respect of any culvert or structure which the Agency or any other person is liable to maintain.

Remedying contraventions

7. If any obstruction is erected or raised or any culvert is constructed, altered or replaced in contravention of paragraph 2 or 3, or if the Council fails to maintain any culvert or structure as required by paragraph 5, the Council shall, upon receiving notice from the Agency, take such action as may be necessary to remedy the effect of the contravention to the Agency's satisfaction and in default the Agency may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the Council as a debt due from the Council to the Agency.

PART VII

PROTECTION FOR RAILWAY PATHS LIMITED AND SUSTRANS

Application of protocol

1. In this Part of this Schedule "the protocol" means the protocol dated 26th September 1997 agreed between the Council, Flintshire County Council, Chester City Council and Sustrans for the construction of a guided busway/cycleway/footway on the alignment of the disused Mickle Trafford to Shotton railway line.

2. The Council, Railway Paths Limited and Sustrans shall enter into and implement such agreements as are required to give effect to the objects of the protocol, including agreements providing—

- (a) for the transfer by Railway Paths Limited to the Council of so much of the Land in the City of Chester and the parish of Hoole comprising the corridor formerly used for the disused Mickle Trafford to Shotton Railway and shown on the land plans as plot no. 47 in the parish of Hoole and plot nos. 15, 17, 17A, 20A, 22 to 26, 31, 33 to 38, 38A, 39 to 42, 43, 43A, 44, 44A, 45, 46, and 54 to 58, in the City of Chester;
- (b) for the management by Sustrans of the cycleway and footway which has been or is to be constructed by the Council on land within the corridor referred to in sub-paragraph (a) and which is not so required; and
- (c) for transitional arrangements between the parties during the construction and commissioning of the guided busway.

Acquisition of land

3. The Council shall not under the powers of this Order acquire from Railway Paths Limited or Sustrans any part of, or any right in, the land specified in paragraph 2(a) except in accordance with the provisions of the above mentioned protocol and agreements, but nothing in this paragraph shall prevent the exercise of such powers against any other person or in respect of that land or rights in it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Cheshire County Council to construct, operate and maintain a guided busway, mainly along part of the former Mickle Trafford to Shotton railway between a site at Hoole, Chester, adjacent to the junction of the M53 and the A55 and the A56, and Northgate Avenue Chester. For this purpose the Order also authorises the Council compulsorily or by agreement to acquire land and rights in land.

Copies of the plans, sections and book of reference mentioned in the Order may be inspected during working hours at the Council's offices at County Hall, Chester, CH1 1SF.