
STATUTORY INSTRUMENTS

2005 No. 3523

The Cambridgeshire Guided Busway Order 2005

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Cambridgeshire Guided Busway Order 2005 and shall come into force on 11th January 2006.

Interpretation

2.—(1) In this Order—

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

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

“the 1984 Act” means the Road Traffic Regulation Act 1984**(3)**;

“the 1990 Act” means the Town and Country Planning Act 1990**(4)**;

“the 1991 Act” means the New Roads and Street Works Act 1991**(5)**;

“the 1992 Act” means the Transport and Works Act 1992;

“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;

“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;

“the busway system” has the meaning given to it in article 34(1) and includes the authorised guided busway and other authorised works;

“carriageway” has the same meaning as in the Highways Act 1980**(6)**;

“cycletrack” means a way over which the public have a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988**(7)**) with a right of way on foot;

“guided busway” means a way provided for the use of vehicles which are constructed or adapted to carry more than eight passengers for hire or reward and use a mode prescribed in article 2(e), (f), (g) or (h) of the Transport and Works (Guided Transport Modes) Order 1992**(8)**;

(1) 1961 c. 33.

(2) 1965 c. 56.

(3) 1984 c. 27.

(4) 1990 c. 8.

(5) 1991 c. 22.

(6) 1980 c. 66.

(7) 1988 c. 52.

(8) S.I.1992/3231 as amended by S.I. 1997/1951.

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

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

“the limits of deviation” means the limits of lateral deviation for the scheduled works mentioned in article 5(1)(a) and (2);

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

“Network Rail” means Network Rail Infrastructure Limited;

“Order limits” means the limits of deviation and the limits of additional land to be acquired or used;

“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 plans” means the plans prepared in pursuance of rule 12(1) and (5) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 and certified by the Secretary of State as the plans for the purposes of this Order and references to land shown on those plans are references to land so shown in pursuance of rule 12(5);

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(9);

“rights of way maps” means the maps certified by the Secretary of State as the rights of way maps for the purposes of this Order;

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

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

“street” includes part of a street;

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

“the tribunal” means the Lands Tribunal;

“the undertaker” means Cambridgeshire County Council.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in on or under land or in the airspace 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) In the case of any street in relation to which an order made under section 249(2) of the 1990 Act (a pedestrian planning order) is in force, the kerb-line of the street, where there is no kerb, shall be taken to be the edge of the part of the street on which the passage of vehicles is permitted.

(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, with or without numbers, shall be construed as references to the points so marked on the plans.

(6) All distances, directions, areas, lengths and points stated in the description of the scheduled works or in any description of powers or lands shall be construed as if the words “or thereabouts”

were inserted after each such distance, direction, 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.

Application of the New Roads and Street Works Act 1991

3.—(1) The authorised guided busway shall be regarded as a tramway undertaking for the purposes of the application of Part III of the 1991 Act (street works) to it, and accordingly, the provisions of that Part relating to tramway undertakings and tramways shall apply to the authorised guided busway.

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

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

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

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

(5) Nothing in article 11 of this Order shall—

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

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

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

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

(3) Subject to paragraph (5), the undertaker may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, in connection with or in consequence of the construction of, the scheduled works, namely—

- (a) stops, platforms and stopping places;
- (b) works required for the alteration, strengthening, improvement, repair or reconstruction of any street;
- (c) buildings and other works required for, or in connection with, the control, management or maintenance of the authorised guided busway or the control or management of any vehicular and pedestrian traffic on or in the vicinity of the authorised guided busway;
- (d) parking and park and ride facilities;
- (e) works for the strengthening, alteration or demolition of any building or structure;
- (f) works to alter the position of any street furniture or apparatus, including mains, sewers, drains and cables;
- (g) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (h) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
- (i) replacement facilities and works for the benefit or protection of premises affected by the other authorised works.

(4) Subject to paragraph (5), the undertaker may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with, or in consequence of, the construction of the scheduled works.

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works—

- (a) within the limits of deviation for the scheduled works shown on the plans; and
- (b) on land specified in column (1) of Schedule 2 to this Order for the purpose specified in relation to that land in column (2) of that Schedule.

Power to deviate

5.—(1) In constructing or maintaining any of the scheduled works, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the plans within the limits of deviation for that work shown on those plans; and
- (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent not exceeding 3 metres upwards; and
 - (ii) to any extent downwards as may be found to be necessary or convenient.

(2) The undertaker may construct and maintain any emergency and maintenance access track comprised in a scheduled work at a different level to the guided busway which it adjoins.

(3) The undertaker may in constructing and maintaining any part of the authorised guided busway provide within the limits of deviation such gaps in the mode of guidance adopted and such number of ways, cross-overs, lay-bys, bus parking areas and sidings as may be necessary or expedient.

Streets

Power to alter layout of streets

6.—(1) The undertaker may alter the layout of any street 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 specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may for the purpose of constructing, maintaining or using any authorised works alter the layout of any street within the limits of deviation or the limits of additional land to be acquired or used; and, without prejudice to the generality of the foregoing, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycletrack or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycletrack or verge;
- (c) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for vehicles or by carrying out other works for that purpose;
- (d) replace or alter the surface or surface treatment of the street;
- (e) carry out works for the provision or alteration of parking places;
- (f) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999⁽¹⁰⁾ and which are carried out in compliance with those Regulations;
- (g) carry out works to the street for the purpose of deterring or preventing vehicles other than authorised vehicles from passing along the authorised guided busway; and
- (h) make and maintain crossovers, sidings or passing places.

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

Power to keep apparatus in streets

7.—(1) The undertaker may, for the purposes of or in connection with the construction, maintenance and use of the authorised guided busway, place and maintain in any street having a junction with or being in the vicinity of the authorised guided busway any work, equipment or apparatus including, without prejudice to the generality of the foregoing, foundations, guidance equipment or structures, platforms, road islands, substations, electric lines and any electrical or other apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part III of the 1991 Act;
- (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989⁽¹¹⁾; and
- (c) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

⁽¹⁰⁾ S.I. 1999/1026.

⁽¹¹⁾ 1989 c. 29.

Power to execute street works

8. The undertaker may, for the purpose of exercising the powers conferred by article 7 and the other provisions of this Order, enter upon any street and may execute any works required for or incidental to the exercise of those powers including, without prejudice to the generality of the foregoing, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

Rights of way over access tracks

9. Public rights of way over the bridleways and cycletracks specified in column (2) of Part 1 of Schedule 4 shall be subject to any conflicting use for the purposes of the authorised guided busway of the emergency and maintenance access tracks whose routes those bridleways and cycletracks follow and in the case of the bridleway between the points marked NP1 and NP2 on the rights of way maps, subject to such rights as may be granted or reserved by the undertaker to facilitate continued access to neighbouring land.

Construction of new and stopping up of existing paths or streets

10.—(1) The undertaker may in connection with the authorised works construct the new paths or streets specified in column (2) of Part 1 and column (3) of Part 2 of Schedule 4 by reference to the letters and numbers shown on the rights of way maps.

(2) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised works, stop up each of the existing or informal paths or streets specified in column (1) of Parts 2 and 3 of Schedule 4 to this Order to the extent specified, by reference to the letters and numbers shown on the rights of way maps, in column (2) of Parts 2 and 3 of that Schedule.

(3) No path or street specified in column (1) of Part 2 of Schedule 4 (being a path or street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article until the new path or street to be substituted for it, and which is specified in relation to it in column (3) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use.

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

(5) Paragraph (2) of this article is subject to paragraph 2 of Schedule 10 to this Order.

Construction and maintenance of new or altered paths or streets

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

(2) Where a path or street is altered or diverted under this Order, the altered or diverted part of the path or street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to—

- (a) the authorised guided busway or Works Nos. 1B and 13;
- (b) the bridleways and cycletracks referred to in Part 1 of Schedule 4 to this Order; or

- (c) the structure of any bridge or tunnel carrying a street over or under the authorised guided busway.

Temporary stopping-up of paths or streets

12.—(1) The undertaker may, during and for the purposes of the execution of the authorised works, temporarily stop up, alter or divert any existing or alleged path or street and may for any reasonable time—

- (a) divert the traffic from the path or street; and
- (b) subject to paragraph (3), prevent all persons from passing along the path or street.

(2) Without prejudice to the generality of paragraph (1), the undertaker may use any path or street stopped up under the powers of this article as a temporary working site.

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

(4) Without prejudice to the generality of paragraph (1), the undertaker may exercise the powers of this article in relation to the existing or alleged paths or streets specified in column (1) of Parts 2 and 3 of Schedule 4 and in column (1) of Schedule 5 to this Order to the extent specified, by reference in part to the letters and numbers shown on the rights of way maps and in part to the Order limits shown on the plans, in each case as specified in column (2) of those Parts of Schedule 4 and of Schedule 5.

(5) The undertaker shall not exercise the powers of this article—

- (a) in relation to any path or street specified as mentioned in paragraph (4) without first consulting the street authority and where a temporary diversion is specified in column (3) of Schedule 5, without that diversion being first completed to the reasonable satisfaction of the street authority and opened for use; and
- (b) in relation to any other path or street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(6) The temporary stopping up, alteration or diversion of any path or street authorised by this Order shall not affect any right of a public communications provider in respect of any apparatus which, at the time of the stopping up or diversion, is in the path or street.

Access to works

13. The undertaker may, for the purposes of the authorised works, form and lay out means of access or improve existing means of access in such locations within the limits of deviation as may be approved by the highway authority but such approval shall not be unreasonably withheld.

Agreements with street authorities

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

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

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

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

Level crossings

15.—(1) The undertaker may construct the authorised guided busway so as to enable vehicles upon it to cross on the level any highway crossing the line of the authorised guided busway including the highways specified in Schedule 6 to this Order.

(2) The undertaker may provide, maintain and operate at or near any level crossing such barriers or other protective equipment as the Secretary of State may in writing approve.

(3) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access shall be treated for the purposes of section 64(4) of the 1984 Act as having been placed as provided by that Act.

(4) Without prejudice to the generality of article 8, the undertaker may in the exercise of the powers of this article alter the level of any highway specified in Schedule 6 to this Order.

(5) In this article—

“barrier” includes gate;

“level crossing” means the place at which the authorised guided busway crosses a highway on the level under the powers conferred by this article;

“protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

Supplemental

Temporary closure of part of Great Ouse

16.—(1) In this article “the waterway” means so much of the river Great Ouse as lies within the limits of deviation.

(2) The undertaker, during and for the purposes of the construction of Work No. 1, may temporarily close the waterway and divert vessels from it.

(3) Any person who suffers loss by the suspension of any right under this article shall be entitled to be paid compensation by the undertaker, to be determined in the case of dispute by the tribunal.

Discharge of water

17.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the limits of deviation shown on the plans or in any street along which the authorised guided busway is authorised to cross, make openings into, and connections with, the watercourse, sewer or drain.

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

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

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

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

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

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority;
- (b) “watercourse” includes all rivers, streams, ditches, 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.

Supplementary powers

18.—(1) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(13) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975(14) as incorporated in any tree preservation order, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the 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.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999(15) as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not be treated as an outline planning permission.

(3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act.

(4) The undertaker shall be regarded as a road transport undertaking for the purposes of section 262(1) of the 1990 Act.

Power to survey and investigate land

19.—(1) The undertaker may for the purposes of this Order—

- (a) survey or investigate any land within the limits of deviation and of land to be acquired or used shown on the plans;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;

(12) 1991 c. 57.

(13) S.I. 1969/17.

(14) S.I. 1975/148.

(15) S.I. 1999/1892.

- (c) without prejudice to the generality of sub-paragraph (a), carry out archaeological investigations on any such land;
 - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
 - (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (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 undertaker—
- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
 - (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.
- (5) The undertaker shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the 1961 Act.
- (6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(16).

Restriction on apparatus

20. For the purposes of section 61 of the 1991 Act (restrictions on apparatus in protected streets) any authorised guided busway including any emergency and maintenance access track or other facility provided in connection with it shall be deemed to have been designated by the street authority as a protected street.

Obstruction of construction of guided busway

21. Any person who, without reasonable excuse, obstructs another person from constructing any of the authorised works under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

- 22.—**(1) The undertaker may acquire compulsorily—
- (a) so much of the land shown on the plans within the limits of deviation and of land to be acquired or used and described in the book of reference as may be required for the purposes of the authorised works; and

(b) so much of the land specified in column (1) of Schedule 2 to this Order (being land shown on the 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) The undertaker shall not under the powers of the Order acquire compulsorily any interest in the land numbered 64 to 69, 265 to 268, 358 to 362 and 372 to 375 inclusive in the book of reference.

Application of Part I of Compulsory Purchase Act 1965

23.—(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(17) 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.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

24.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(18) 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 sub-section (1) there shall be substituted—

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

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

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

(5) In that section, sub-sections (5) and (6) there shall be substituted—

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

(17) 1981 c. 67.

(18) 1981 c. 66.

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
 - (b) he holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.
- (6) In section 5 (earliest date for execution of declaration)—
- (a) in sub-section (1), after “publication” there shall be inserted “in the London Gazette or in a local newspaper circulating in the area in which the land is situated”; and
 - (b) sub-section (2) shall be omitted.
- (7) In section 7 (constructive notice to treat) in sub-section (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.
- (8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 23.

Powers to acquire new rights

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

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 to this Order), where the undertaker acquires a right over land under paragraph (1) the undertaker shall not be required to acquire a greater interest in it.

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

(4) In relation to land to which this paragraph applies, article 22, so far as relating to the acquisition or creation of easements or other rights by virtue of paragraph (1), shall be treated as also authorising acquisition by a statutory utility in any case where the Secretary of State gives his consent in writing.

(5) Paragraph (4) applies to land to which article 22 applies and which is or will be required for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of the work authorised by the Order; and, in that paragraph, “statutory utility” means a licence holder within the meaning of Part I of the Electricity Act 1989⁽¹⁹⁾, a public gas transporter within the meaning of Part I of the Gas Act 1986⁽²⁰⁾, a water undertaker within the meaning of the Water Industry Act 1991⁽²¹⁾, a sewerage undertaker within the meaning of Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

Powers to acquire subsoil only

26.—(1) The undertaker may compulsorily acquire so much of the subsoil of the land referred to in paragraph (a) or (b) of article 22 as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) shall not prevent article 31 from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

⁽¹⁹⁾ 1989 c. 29.

⁽²⁰⁾ 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45).

⁽²¹⁾ 1991 c. 56.

Rights under or over streets

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

(2) The power under paragraph (1) may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street and except in relation to a street which is subject to stopping-up pursuant to article 10, the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the street.

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

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

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

Temporary possession of land

Temporary use of land for construction of works

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

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

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of 2 years beginning with the date of completion of the works specified in relation to that land in column (4) of Schedule 8 to this Order.

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

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

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

(7) Without prejudice to article 57, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

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

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

Temporary use of land for maintenance of works

29.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works and without prejudice to any other powers available to it, the undertaker may—

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

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

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

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

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

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

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

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

(8) Without prejudice to article 57, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) In this article—

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

Compensation

Disregard of certain interests and improvements

30.—(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

31.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 23(1)) in any case where—

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

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

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

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

(5) If on such a reference the tribunal 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 undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal 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) the material detriment is not confined to a part of the land subject to the counter-notice,

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

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

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

Extinction or suspension of private rights of way

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

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

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

whichever is sooner.

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

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

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

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

Time limit for exercise of powers of acquisition

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

- (a) no notice to treat shall be served under Part I of the 1965 Act, as applied to the acquisition of land under article 23; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 24.

(2) The powers conferred by article 28 to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the day on which this Order comes into force, but this paragraph shall not prevent the undertaker remaining in possession of land in accordance with article 28 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

OPERATION OF BUSWAY SYSTEM

Power to operate and use busway system

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

(2) Subject to article 47, the undertaker shall have the exclusive right to use the authorised guided busway and any apparatus or facilities used for the operation of the busway system and to permit others to do so on such terms as it sees fit.

(3) Any person who, without the consent of the undertaker or other reasonable excuse, uses the authorised guided busway and any apparatus or facilities used for the operation of the busway system 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 the authorised works are situated or cross over except to the extent that the exercise of the right is constrained by the existence of the authorised works.

Power to charge fares

35. The undertaker 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 the busway system, as it thinks fit.

Registration of busway services

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

Substitute road services

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

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

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

As to quality partnership schemes

38. Section 114(6)(b) of the Transport Act 2000 (quality partnership schemes not to include requirements as to frequency or timing of services) shall not apply to any quality partnership scheme made in relation to services operating on any authorised guided busway.

Maintenance of approved works, etc.

39.—(1) Where pursuant to regulations⁽²²⁾ 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 undertaker shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

Removal of obstructions

40.—(1) If any obstruction is caused to vehicles using the authorised guided busway by a vehicle waiting, loading, unloading or breaking down on any part of the authorised guided busway, the person in charge of the vehicle shall forthwith remove it; and if he fails to do so the undertaker may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

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

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

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

(22) See S.I. 1994/157.

(3) For the purposes of this article the owner of a vehicle shall be taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of the vehicle at any time, it shall be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicle Excise and Registration Act 1994(23).

Traffic signs

41.—(1) The undertaker may, for the purposes of, or in connection with the operation of, the authorised guided busway, and notwithstanding anything in section 64(4) of the 1984 Act, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of that Act or of a character authorised by the Secretary of State on any street which has a junction with or otherwise gives access to the authorised guided busway.

(2) Unless the undertaker is the traffic authority, the undertaker—

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

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs shall include a power to give directions to the undertaker as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) 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 authorised guided busway runs or to which it gives access shall consult the undertaker as to the placing of any traffic sign which would affect the operation of the authorised guided busway.

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

Traffic regulation

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

- (a) prohibit or restrict the waiting or the loading or unloading of vehicles in the manner specified in Part 1 of Schedule 9 to this Order on those roads specified in column (2) and along the lengths and between the points specified in column (3) of that Part of that Schedule;
- (b) prohibit driving by the establishment of bus and cycle lanes on the roads specified in column (2) and along the lengths and between the points specified in column (3) of Part 2 of Schedule 9 to this Order;
- (c) prohibit vehicle turning in the manner specified in Part 3 of Schedule 9 to this Order on the roads specified in column (2) and at the points and as respects direction to the extent specified in column (3) of that Part of that Schedule;
- (d) prohibit driving in the manner specified in Part 4 of Schedule 9 to this Order on those roads specified in column (2) and at the points and as respects direction to the extent specified in column (3) of that Part of that Schedule;

- (e) make provision for parking as specified in Part 5 of Schedule 9 to this Order in the locations specified in column (2) and in the manner specified in column (3) of that Part of that Schedule; and
 - (f) revoke any traffic regulation order in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.
- (2) The undertaker shall not exercise the powers of this article unless it has—
- (a) given not less than 12 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
 - (b) advertised its intention in such manner as the traffic authority may within 28 days of its receipt of notice of the undertaker's intention specify in writing.
- (3) Any prohibition, restriction or other provision made by the undertaker under sub-paragraph (1)(a), (b), (c) or (d) or (f) shall have effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may—
- (a) define categories of vehicle to be included in any class for the purpose of any prohibition, restriction or other provision mentioned in Schedule 9; and
 - (b) specify savings (in addition to those mentioned in Schedule 9) to which the prohibition, restriction or other provision is subject.
- (4) Any authorisation of a parking place made by the undertaker under sub-paragraph (1)(e) shall have effect as if duly made by the local authority as an order under section 32 of the 1984 Act.

Power to lop or fell trees overhanging busway system

43.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised guided 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 undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) 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 1961 Act.

(4) The following, namely—

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

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

Trespass on busway system

44.—(1) Any person who—

- (a) trespasses on the authorised guided busway; or

- (b) trespasses upon any land of the undertaker in dangerous proximity to the authorised guided busway or to any electrical or other apparatus used for or in connection with the operation of the authorised guided busway,

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

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

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

Power to make byelaws

45.—(1) The undertaker may make byelaws regulating the use and operation of, and travel on the authorised guided busway, the maintenance of order on the authorised guided busway and on authorised guided busway premises or other facilities provided in connection with the busway system and the conduct of all persons including employees of the undertaker while on the authorised guided busway or on authorised guided 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 authorised guided busway, the payment of fares and charges and the evasion of payment of fares and charges;
- (b) with respect to interference with, or obstruction of, the operation of the authorised guided busway or other facilities provided in connection with the authorised guided busway;
- (c) with respect to access to and the carriage, use or consumption of anything on the authorised guided busway or on authorised guided busway premises;
- (d) with respect to the prevention of nuisance or trespass on the authorised guided busway or on authorised guided busway premises;
- (e) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within authorised guided busway premises;
- (f) for the safe custody and re-delivery or disposal of any property accidentally left on the authorised guided busway or on authorised guided busway premises and for fixing the charges made in respect of any such property; and
- (g) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the busway system or on authorised guided busway premises.

(3) In paragraphs (1) and (2) references to “authorised guided busway premises” are references to premises of the undertaker used for or in connection with the operation of the authorised guided busway including any authorised busway vehicle.

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

(5) Byelaws under the article may provide that any person so authorised by the undertaker may lawfully apprehend and detain any person who is reasonably believed to be committing or attempting to commit an offence under the byelaws, or to have done so, until that person can be properly charged with that offence or discharged by due process of law.

(6) 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 undertaker in the operation of the authorised guided busway, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.

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

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

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

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

(11) 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.

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

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

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

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

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

Power to contract for police services

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

(2) Any such agreement may provide for—

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

(3) In this article—

- (a) “chief officer of police” means a chief officer of police within the meaning of the Police Act 1996⁽²⁴⁾ or the Chief Constable of the British Transport Police Force; and
- (b) “police authority” means a police authority within the meaning of that Act or the British Transport Police Authority within the meaning of the Railways and Transport Safety Act 2003⁽²⁵⁾.

Power of disposal, agreements for operation, etc.

47.—(1) The undertaker 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 authorised works and any land held in connection therewith or the right to operate the works under this Order.

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

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

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

(5) Nothing in section 15(2) of the Transport Act 1968 (restriction or alteration of charges) shall apply in relation to the operation of the busway system by any person other than the undertaker, but this paragraph is without prejudice to any provision with respect to charges that may be made in an agreement under paragraph (1) or (2).

Application of landlord and tenant law

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

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

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

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

⁽²⁴⁾ 1996 c. 16.

⁽²⁵⁾ 2003 c. 20.

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

Town and country planning: statutory undertakers

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

(2) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

PART 5

PROTECTIVE PROVISIONS

Statutory undertakers, etc.

50. The provisions of Schedule 10 to this Order shall have effect.

Protective provisions

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

Minerals

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

PART 6

MISCELLANEOUS AND GENERAL

As to local railway enactments

53.—(1) Any local enactment which makes provision in relation to any railway or former railway within the limits of deviation shall have effect subject to the provisions of this Order.

(2) The following enactments shall cease to have effect on the transfer to the undertaker of Network Rail’s interest in the land within the limits of deviation for Works Nos. 1 to 12 or so much of that interest as the undertaker may require for the purposes of those works—

- (a) The Cambridge and Huntingdon Railway Act 1845(**26**); and

(b) Section 7(E) and (G) and sections 8, 9, 11 and 28 of the Great Eastern Railway Act 1875⁽²⁷⁾.

(3) The Bedford and Cambridge Railway Act 1860⁽²⁸⁾ shall cease to have effect in its application to any part of the lands within the limits of deviation for Works Nos. 14 to 16 upon the transfer to the undertaker under or for the purposes of the Order of Network Rail's interest in such land.

Disclosure of confidential information

54. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 19; and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret,

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

Certification of plans, etc.

55. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the book of reference, and the plans and sections to the Secretary of State for certification that they are true copies of, respectively, the book of reference, plans and sections 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

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

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

(3) For the purposes of section 7 of the Interpretation Act 1978⁽²⁹⁾ 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.

⁽²⁷⁾ 1875 c. cxxxiv.

⁽²⁸⁾ 1860 c. clxxxiii.

⁽²⁹⁾ 1978 c. 30.

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

No double recovery

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

Arbitration

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

Signed by authority of the Secretary of State for Transport

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

21st December 2005