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STATUTORY INSTRUMENTS

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**2001 No. 3627**

**The South Hampshire Rapid Transit Order 2001**

**PART II**

**WORKS PROVISIONS**

*Supplemental*

**Attachment of equipment to buildings for purposes of transit system**

**27.**—(1) Subject to the following provisions of this article, the undertaker may affix to any building, other than an excepted building—

- (a) any brackets, cables, wires, insulators and other apparatus required in connection with the authorised transit system; and
- (b) any lamps, brackets, pipes, electric lines and other apparatus required for the provision of additional or substitute street lighting in consequence of the construction of the authorised transit system.

(2) The undertaker shall not under this article affix any apparatus to a building without the written consent of the relevant owner of the building; and such consent may be given subject to reasonable conditions (including, where appropriate, the payment of rent) but shall not be unreasonably withheld.

(3) Where—

- (a) the undertaker serves on the relevant owner of a building a notice requesting the owner's consent to the affixing of specified apparatus to the building, and
- (b) the relevant owner does not within the period of 56 days beginning with the date upon which the notice is served give his consent unconditionally or give it subject to conditions or refuse it,

the consent shall be deemed to have been withheld.

(4) Where, in the opinion of the undertaker, a consent required under this article for the affixing of specified apparatus is unreasonably withheld or given subject to unreasonable conditions, it may apply to the magistrates' court, who may either allow the apparatus to be affixed subject to such conditions, if any, as it thinks fit or may disallow the application.

(5) Where apparatus is affixed to a building under this article—

- (a) any owner for the time being of the building may serve on the undertaker not less than 28 days' notice requiring the undertaker at its own expense temporarily to remove the apparatus during any reconstruction or repair of the building if such removal is reasonably necessary for that purpose; and
- (b) the undertaker shall have the right as against any person having an interest in the building to maintain the apparatus.

(6) The undertaker shall pay compensation to the owners and occupiers of the building for any loss or damage sustained by them by reason of the exercise of the powers conferred by paragraphs (1) and (5)(b) above; and any dispute as to a person's entitlement to compensation, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961(1).

(7) In this article—

“building” includes any structure and a bridge or aqueduct over the street;

“excepted building” means any building existing at the time of this Order at—

26 and 33 Hartland's Road, 158 Redlands Lane and 115/117, 131, 147, 149, 153, 183, 192 and 203 West Street;

3 and 14 Carlyle Road, 5 Ford Road, 9 Forton Road and 21 St Ann's Crescent, Gosport; and

1 to 5 and 61 Queen Street, Portsmouth; and

“relevant owner”—

(a) in relation to a building occupied under a lease or tenancy having an unexpired term exceeding 5 years, means the occupier of the building; and

(b) in relation to any other building, means the person for the time being receiving the rack rent of the building whether on his own account or as agent or trustee for any other person, or who would so receive it if the building were let at a rack rent.

### **Discharge of water**

**28.**—(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 works plans or in any street along which any authorised street tramway is authorised to be laid, 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(2).

(7) In this article—

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(1) 1961 c. 33.

(2) 1991 c. 57.

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority, or a harbour authority within the meaning of the Harbours Act 1964(3);
- (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.

### **Safeguarding works to buildings**

**29.**—(1) Subject to the following provisions of this article, the undertaker may, at its own expense and from time to time, carry out such safeguarding works to any building lying within the limits of deviation or on the lands numbered 16/12 and 16/13 on the land plans as the undertaker considers to be necessary or expedient.

(2) Safeguarding works may be carried out—

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

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

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

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

(5) Before exercising—

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

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

(6) Where notice is served under paragraph (5)(a), (c) or (d) above, the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 71 below.

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

(8) Where—

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(3) 1964 c. 40.

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

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

(9) Without prejudice to article 70, nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) above shall be determined, in case of dispute, under Part I of the Land Compensation Act 1961(4).

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection; and
- (b) “safeguarding works”, in relation to a building, means—
  - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works;
  - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and
  - (iii) any works the purpose of which is to secure the safe operation of the transit system or to prevent or minimise the risk of such operation being disrupted.

### **Power to construct temporary transit systems**

**30.**—(1) The undertaker may, if it considers it necessary or expedient in consequence of any works executed or proposed to be executed in a street along which an authorised street tramway is constructed—

- (a) remove or discontinue the operation of the authorised street tramway; and
- (b) lay, maintain and operate in or near to that street a temporary transit system in lieu of the authorised street tramway.

(2) The powers conferred by this article may only be exercised with the consent of the highway authority but such consent shall not be unreasonably withheld.

(3) The provisions of article 53 below shall apply in relation to temporary transit systems laid under this article as they apply in relation to authorised street tramways.

### **Planning permission: supplementary matters**

**31.** Planning permission which is deemed by virtue of a direction under section 90(2A) of the Town and Country Planning Act 1990(5) 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 the Town and Country Planning Act 1990.

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(4) 1961 c. 33.

(5) 1990 c. 8.

### **Power to survey and investigate land**

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

- (a) survey or investigate any land within the limits of deviation shown on the works plans or in any street along which any authorised street tramway is authorised to be laid;
- (b) without prejudice to the generality of sub-paragraph (a) above, 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;
- (c) without prejudice to the generality of sub-paragraph (a) above, 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) above.

(2) No land may be entered, or equipment placed or left on or removed from the land, under paragraph (1) above, 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 Land Compensation Act 1961<sup>(6)</sup>.

(6) Nothing in this article shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979<sup>(7)</sup>.

### **Mode of construction and operation of transit system**

**33.**—(1) The authorised transit system shall be operated by electricity or, in an emergency or for the purposes of maintenance, by diesel power or other means.

(2) The authorised street tramway and authorised tramroad shall be constructed on a nominal gauge of 1,435 millimetres.

(3) Except with the consent of the street authority (which shall not be unreasonably withheld) the authorised street tramways (other than any reserved track tramways) shall be so constructed and maintained as to ensure that the uppermost surface of the rails is level with the surrounding surfaces of the street in which they are laid.

### **Obstruction of construction of transit system**

**34.** 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.

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<sup>(6)</sup> 1961 c. 33.

<sup>(7)</sup> 1979 c. 46.

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

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