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STATUTORY INSTRUMENTS

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**2001 No. 3627**

**The South Hampshire Rapid Transit Order 2001**

**PART IV**

**OPERATION OF TRANSIT SYSTEM**

**Power to operate and use transit system**

**47.**—(1) The undertaker may operate and use the authorised transit system and the other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Subject to paragraph (4) below and to article 59 below, the undertaker shall, for the purpose of operating the transit system, have the exclusive right—

- (a) to use the rails or other guidance, foundations, cables, masts, overhead wires and other apparatus used for the operation of the transit system; and
- (b) to occupy any part of the street in which that apparatus is situated.

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

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

**Maintenance of approved works, etc.**

**48.**—(1) Where pursuant to regulations made under section 41 of the Transport and Works Act 1992 (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 transit system, 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 transit system.

(2) If without reasonable cause the provisions of paragraph (1) above 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.

**Power to charge fares**

**49.** The undertaker may demand, take and recover or waive such charges for carrying passengers or goods on the authorised transit system, or for any other services or facilities provided in connection with the operation of the authorised transit system, as it thinks fit.

### **Disapplication of duties respecting provision of transport services**

**50.** Section 63(7) of the Transport Act 1985(1) shall not apply to the undertaker in respect of transit services procured by it under this Order, and any service subsidy agreement relating to the operation of a transit service shall be excluded from section 89(1) of that Act.

### **Concessionary travel**

**51.** Sections 93 to 102 and 112 of the Transport Act 1985 (which make provision for travel concession schemes) shall apply to transit services, notwithstanding that such services may not be eligible services as defined in section 94(4) of that Act.

### **Removal of obstructions**

**52.—**(1) If any obstruction is caused to rapid transit vehicles using the authorised transit system by a vehicle waiting, loading, unloading or breaking down on any part of the transit system, 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 rapid transit vehicles; 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 rapid transit vehicles using the authorised transit system by a load falling on the transit system from a vehicle, the person in charge of the vehicle shall forthwith remove the load from the transit system; 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.

(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 Vehicles Excise and Registration Act 1994(2).

### **Traffic signs**

**53.—**(1) The undertaker may, for the purposes of, or in connection with the operation of, the authorised transit system, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State on any street in which the authorised transit system is laid or which gives access to such a street.

(2) The undertaker—

- (a) shall consult with 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.

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(1) 1985 c. 67; section 63 was amended by the Transport Act 2000 (c. 38), Schedule 11.

(2) 1994 c. 22.

(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) above 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 any street in which the authorised transit system is laid or which gives access to such a street shall consult with the undertaker as to the placing of any traffic sign which would affect the operation of the authorised transit system.

(5) Rapid transit vehicles shall be taken to be public service vehicles for the purposes of section 122(2)(c) of the 1984 Act.

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

### **Traffic regulation**

**54.**—(1) Subject to the provisions of this article, the undertaker may, for the purposes of the authorised transit system, 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 I of Schedule 10 to this Order on those roads specified in column (2) and along the lengths and between the points specified in columns (3) and (4) of that Part of that Schedule;
- (b) authorise the use as a parking place in the manner specified in Part II of Schedule 10 to this Order of those roads specified in column (2) and along the lengths and between the points specified in column (3) and (4) of that Part of that Schedule;
- (c) make provision as to the direction of vehicular traffic in the manner specified in Part III of Schedule 10 to this Order on the roads specified in column (2) and as respects direction to the extent specified in column (3) of that Part of that Schedule;
- (d) prohibit vehicular access in the manner specified in Part IV of Schedule 10 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) 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 undertakers' intention specify in writing.

(3) Any prohibition, restriction or other provision made by the undertaker under sub-paragraph (1)(a), (c), (d) or (e) above shall have effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify savings (in addition to those mentioned in Schedule 10) 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)(b) above shall have effect as if duly made by the local authority as an order under section 32 of the 1984 Act.

### **Power to lop trees overhanging transit system**

**55.**—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised transit system, 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 transit system or any apparatus used for the purposes of the transit system; or
- (b) from constituting a danger to passengers or other persons using the transit system.

(2) In exercising the powers in paragraph (1) above, 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) Nothing in this article shall be taken to affect the application of any tree preservation order made under section 198 of the Town and Country Planning Act 1990<sup>(3)</sup>.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961<sup>(4)</sup>.

### **Trespass on tramroads and busways**

**56.**—(1) Any person who—

- (a) trespasses on any authorised tramroad or any part of the authorised guided busway which is not in a public highway, or
- (b) trespasses upon any land of the undertaker in dangerous proximity to the authorised tramroads or any part of the authorised guided busway which is not in a public highway or to any electrical or other apparatus used for or in connection with the operation of the authorised tramroads,

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

(2) 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 tramroads was clearly exhibited and maintained at the station or other stopping place on the authorised transit system nearest the place where the offence is alleged to have been committed.

### **Power to make byelaws**

**57.**—(1) The undertaker may make byelaws regulating the use and operation of, and travel on, the authorised transit system, the maintenance of order on the authorised transit system and on transit system premises or other facilities provided in connection with the authorised transit system and the conduct of all persons, including employees of the undertaker, while on the authorised transit system or on transit system premises.

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

- (a) with respect to tickets issued for travel on the authorised transit system, the payment of fares and charges and the evasion of payment of fares and charges;
- (b) with respect to interference with, or obstruction of, the operation of the authorised transit system or other facilities provided in connection with the authorised transit system;

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<sup>(3)</sup> 1990 c. 8.

<sup>(4)</sup> 1961 c. 33.

- (c) with respect to access to and the carriage, use or consumption of anything on transit system premises;
- (d) with respect to the prevention of nuisances on transit system 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 transit system premises;
- (f) for the safe custody and re-delivery or disposal of any property accidentally left on transit system 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 authorised transit system or on transit system premises.

(3) In paragraphs (1) and (2) above references to “transit system premises” are references to premises of the undertaker used for or in connection with the operation of the authorised transit system including the tunnel, any depot or building and any rapid transit 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) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (4) above, 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 transit system, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.

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

(7) At least 28 days before applying for any byelaws to be confirmed under this article, the 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.

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

(9) 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.

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

(11) The Secretary of State may charge the 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.

(12) 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.

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

**58.**—(1) Agreements may be made—

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

for making available to the undertaker for the purposes of the operation of its transit system undertaking the services of members of the police force or, as the case may be, members of the British Transport Police Force on such terms as to payment or otherwise, and subject to such conditions, as the parties to them think fit.

(2) In this article—

- (a) “chief officer of police”, “police authority” and “police force” have the same meaning as in the Police Act 1964<sup>(5)</sup>; and
- (b) “the British Transport Police Force” means the force organised under the British Transport Police Scheme 1963<sup>(6)</sup>.

### **Powers of disposal, agreements for operation, etc.**

**59.**—(1) The undertaker may, in the case of the authorised transit system 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 authorised works under this Order.

(2) Without prejudice to the generality of paragraph (1) above, 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 subsection (2) above may provide for the exercise of the powers of the undertaker in respect of the authorised works or any part thereof, and for the transfer to any person of the authorised works or any part 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) above, or any agreement under paragraph (2) above, shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the undertaker.

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<sup>(5)</sup> 1964 c. 48.

<sup>(6)</sup> The British Transport Police Scheme 1963 is contained in the Schedule to the British Transport Police Force Scheme 1963 (Approval) Order 1964 (S.I. 1964/1456). The scheme was subsequently amended by the British Transport Police Force Scheme 1963 (Amendment) Order 1992 (S.I. 1992/364) and continues in force, as if made under section 132 of the Railways Act 1993 (c. 43), by virtue of paragraph 3(2) of Schedule 10 to that Act. The scheme was subsequently further amended by the British Transport Police Force Scheme 1963 (Amendment) Order 1994 (S.I. 1994/609) and the text of the scheme, as amended, is set out in the Schedule to that Order.

### **Application of landlord and tenant law**

**60.**—(1) This article applies to any agreement for leasing to any person the whole or any part of the authorised transit system 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 transit system, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

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

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Tramcars deemed to be public service vehicles**

**61.**—(1) On such day as may be appointed under paragraph (2) below, regulations made, or having effect as if made, under sections 24, 25 or 60(1)(j) or (k) of the Public Passenger Vehicles Act 1981(7) shall have effect as if the tramcars used on the authorised transit system were public service vehicles used in the provision of a local service within the meaning of the Transport Act 1985.

- (a) (2) (a) The undertaker may by resolution appoint a day for the purpose of any regulation mentioned in paragraph (1) above, the day so appointed being fixed in accordance with sub-paragraph (b) below.
- (b) The undertaker shall publish in a newspaper circulating in its area, notice—
  - (i) of the passing of any such resolution and of the day fixed thereby; and
  - (ii) of the general effect of the enactments for the purposes of which the day has been fixed;and the day so fixed shall not be earlier than the expiration of 28 days from the date of the publication of the notice.
- (c) A photostatic or other reproduction certified by the secretary of the undertaker to be a true reproduction of a page, or part of a page, of any newspaper bearing the date of its publication and containing the notice mentioned in sub-paragraph (b) above shall be evidence of the publication of the notice and of the date of publication.

### **Substitute road services**

**62.**—(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 transit system 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.

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(7) 1981 c. 14.

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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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(3) Section 6 of the Transport Act 1985<sup>(8)</sup> shall not apply to any substitute services.

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<sup>(8)</sup> 1985 c. 67.