
STATUTORY INSTRUMENTS

2006 No. 3118

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Luton Dunstable Translink Order 2006

Made - - - - 22nd November
2006
Coming into force - - 13th December 2006

An application has been made to the Secretary of State, in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000⁽¹⁾ made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992⁽²⁾ (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act;

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

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with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

Notice of the Secretary of State’s determination was published in the London Gazette on 8th November 2006;

Accordingly the Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7 to 13 and 15 to 17 of Schedule 1 to, the 1992 Act makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Luton Dunstable Translink Order 2006 and shall come into force on 13th December 2006.

(1) S.I. 2000/2190.

(2) 1992 c. 42. As amended by S.I. 1995/1541, 1998/2226, 2000/3199, 2006/557 and 2006/958.

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961**(3)**;
- “the 1965 Act” means the Compulsory Purchase Act 1965**(4)**;
- “the 1980 Act” means the Highways Act 1980**(5)**;
- “the 1984 Act” means the Road Traffic Regulation Act 1984**(6)**;
- “the 1985 Act” means the Transport Act 1985**(7)**;
- “the 1990 Act” means the Town and Country Planning Act 1990**(8)**;
- “the 1991 Act” means the New Roads and Street Works Act 1991**(9)**;
- “the 2003 Act” means the Communications Act 2003**(10)**;
- “the Applications Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000;
- “authorised busway” means any busway or 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;
- “bridleway”, “footpath”, “highway” and “highway authority” have the same meaning as in the 1980 Act;
- “busway” means a busway comprised within Work Nos. 1G, 1J, 1N, 2A, 2B and 5;
- “carriageway” has the same meaning as in the 1980 Act;
- “the Council” means Luton Borough Council;
- “the County Council” means Bedfordshire County Council;
- “cycle track” 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**(11)**) with a right of way on foot;
- “the deposited plans” means the plans certified by the Secretary of State as the plans for the purposes of this Order;
- “the deposited sections” means the sections certified by the Secretary of State as the sections for the purposes of this Order;
- “guided bus” means a vehicle intended for the carriage of passengers and which is guided by the mode of guidance prescribed for the purposes of section 1(1)(d) of the 1992 Act by article 2(h) of the Transport and Works (Guided Transport Modes) Order 1992**(12)** (track-based with side guidance) (whether or not capable of being operated in some other way);
- “guided busway” means a busway adapted to provide the mode of guidance for a guided bus so prescribed;
- “the limits of deviation” means the limits of deviation shown on the deposited plans;

(3) 1961 c. 33.

(4) 1965 c. 56.

(5) 1980 c. 66.

(6) 1984 c. 2.

(7) 1985 c. 67.

(8) 1990 c. 8.

(9) 1991 c. 22. As amended by the [Traffic Management Act 2004](#). c. 18.

(10) 2003 c. 21.

(11) 1988 c. 52.

(12) S.I. 1992/3231.

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

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

“Order limits” means the limits of deviation and the lines marked “limit of land to be acquired or used” on the deposited plans;

“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;

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

“the scheduled works” means the works specified in Schedule 1 to this Order;

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“Translink” has the meaning given in article 29 (power to operate and use Translink); and

“the tribunal” means the Lands Tribunal.

(2) Where the book of reference, the deposited sections or the deposited plans was or were revised before this Order was made, any reference to it or them in this Order is to the latest version as certified under article 51 (certification of plans etc).

(3) 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 air-space over its surface and references to the subsoil of any land include references to any cellar, basement, vault, arch or other construction forming part of any such land.

(4) All directions, distances, areas, lengths and points stated in any description of works, powers or lands, shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, area, length, and point, and distances between points on the authorised busway shall be taken to be measured along the centre line of the busway.

(5) Unless the context otherwise requires, 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.

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

(7) References in this Order to highways lettered FP, BW or BL are references respectively to footpaths, bridleways and bus lanes.

(8) For the purposes of any enactment applying, or operating by reference to, the definition of “public service vehicle” in section 1 of the Public Passenger Vehicles Act 1981(13), that definition shall be taken to include guided buses operating a service making use of the authorised busway.

Application of the 1991 Act

3.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part 3 of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a) and (c) to (h) of section 86(3) of the 1991 Act (which defines what highway authority works are major highway works),
- or

- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) In Part 3 of the 1991 Act, references in relation to major highway works, to the highway authority concerned shall, in relation to works which are major highway works by virtue of paragraph (1) be construed as references to the Council.

PART 2

WORKS PROVISIONS

Principal Powers

Power to construct and maintain works

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

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

(3) Subject to paragraph (7), the Council may from time to time carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) stopping places and such other gaps in the mode of guidance adopted and such number of ways, cross-overs, lay-bys, bus parking areas as may be necessary or convenient;
- (b) works required for or in connection with, the control of vehicular or pedestrian traffic on or in the vicinity of the authorised busway;
- (c) works for the alteration or demolition of any building or structure;
- (d) works to alter the position of any street furniture or apparatus, including mains, sewers, drains and cables;
- (e) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
- (g) works to erect and construct such houses, warehouses, offices, and other buildings, yards, stations, engines, machinery, apparatus, and other works, and conveniences as the Council thinks fit;
- (h) junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way interfered with by, or contiguous with, any of the works described in this paragraph, and works to widen or alter any highway or access way for the purposes of connecting it with any of those works or another highway, or of crossing under or over another highway or access way;
- (i) all such embankments, aprons, abutments, retaining walls, wing walls, culverts and such other works as the Council thinks fit; and
- (j) works for the benefit or protection of premises affected by the scheduled works.

(4) Subject to paragraph (7), the Council may from time to time carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(5) Where the Council lays down conduits for the accommodation of cables or other apparatus for the purposes of the authorised works or associated traffic control, the Council may provide in, or in connection with, such conduits accommodation for the apparatus of any other person, and manholes and other facilities for access to such accommodation, and may permit the use of such conduits and facilities on such terms and conditions as may be agreed between the Council and such other person.

(6) Without prejudice to the generality of paragraphs (2) and (3), the Council may, in connection with the construction of the scheduled works—

- (a) provide a footpath between points F5 and F6 in the District of South Bedfordshire; and
- (b) provide a footpath between points F18, F23 and F24 in the Borough of Luton.

(7) Paragraphs (3), (4), (5) and (6) shall only authorise the carrying out or maintenance of works outside the limits of deviation for the scheduled works if the works are carried out on land specified in columns (1) and (2) of Schedule 2 (acquisition of certain land) to this Order for the purpose specified in relation to that land in column (3) of that Schedule.

Power to deviate

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

- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation for that work shown on those plans, and
- (b) deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards or downwards.

Streets

Power to alter layout of streets

6.—(1) The Council may alter the layout of any street specified in columns (1) and (2) of Schedule 3 (streets subject to alteration of layout) to this Order in the manner specified in relation to that street in column (3) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), the Council may for the purpose of constructing, maintaining or using the authorised busway alter the layout of any street within the Order limits; and, without prejudice to the generality of the foregoing, the Council may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for buses or by carrying out other works for that purpose;
- (d) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than guided buses from passing along the authorised busway; and
- (e) make and maintain crossovers, sidings or passing places.

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

Power to keep apparatus in streets

7.—(1) The Council may, for the purposes of or in connection with the construction, maintenance and use of any authorised works, place and maintain in any street having a junction with or being in the vicinity of the authorised busway any work, equipment or apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act; and
- (b) the reference to any work, equipment or apparatus in a street includes a reference to any work, equipment or apparatus under, over, along or upon the street.

Power to execute street works

8.—(1) The Council may, for the purpose of exercising the powers conferred by article 7 (power to keep apparatus in streets) and the other provisions of this Order, enter upon any street within the Order limits 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.

(2) This article is subject to paragraph 3 of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order.

Stopping up of streets

9.—(1) Subject to the provisions of this article, the Council may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 (streets to be stopped up) to this Order to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of Parts 1 and 2 of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets to be stopped up) to this Order (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, and which is specified in relation to it by reference to the letters and numbers shown on the deposited plans in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route is available between the commencement and termination points of the street to be stopped up pending completion of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 4 (streets to be stopped up) to this Order (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the relevant land; and for this purpose “relevant land” means any land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the Council is in possession of the land, or
- (b) there is no right of access to the land from the street concerned, or
- (c) there is reasonably convenient access to the land otherwise than from the street concerned, or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Where a street has been permanently stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished, and
- (b) the Council may appropriate and use for the purposes of the authorised busway so much of the site of the street as is bounded on both sides by land owned by the Council.

(6) 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 1 of the 1961 Act.

(7) This article is subject to paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order.

Temporary stopping up of streets

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

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) Without prejudice to the generality of paragraph (1), the Council may exercise the powers of this article in relation to the streets specified in columns (1) and (2) of Schedule 5 (streets to be temporarily stopped up) to this Order to the extent specified, by reference to the letters and numbers shown on the deposited plans in column (3) of that Schedule.

(4) The Council shall not exercise the powers of this article—

- (a) in relation to any street specified as mentioned in paragraph (3) without first consulting the street authority, and
- (b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The provisions of the 1991 Act mentioned in paragraph (6) 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 Council under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the Council.

(6) The provisions of the 1991 Act referred to in paragraph (5) are—

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

(7) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

11. The Council may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 6 (access to works) to this Order at or about the points marked “A”; and
- (b) with the approval of the highway authority (such approval not to be unreasonably withheld) form and lay out means of access or improve existing means of access at such other locations within the Order limits as the Council reasonably require for the purposes of the authorised works.

Construction and maintenance of new or altered streets

12.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 24 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 24 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 the structure of any bridge or tunnel carrying a street over or under an authorised busway.

(4) Any footpath to be provided under this Order shall be provided in accordance with the reasonable requirements of the highway authority and once open for use shall be maintained by and at the expense of the highway authority.

(5) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Council shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act.

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

(7) Paragraphs (1), (2) and (4) shall not apply in relation to the construction and maintenance of Work Nos. 1A, 1B, 1C, 1E, 1K and 1L.

Construction of bridges and tunnels

13.—(1) Any bridge or tunnel to be constructed under this Order for carrying a highway over or under an authorised busway shall be constructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

(2) In constructing any new bridges the Council may do either or both of the following—

- (a) hold, use and appropriate such parts of the original bridges as they may require for the purposes of the new bridges or for any purposes ancillary to their undertaking;
- (b) take down and remove such parts of the original bridges as they do not require for those purposes.

(3) Notwithstanding article 47 (application of existing enactments), all of the powers and obligations that may be conferred or imposed upon the Council by the 1855 Act in relation to the original bridges shall cease to have effect.

(4) In this article—

“1855 Act” has the same meaning as in article 47 (application of existing enactments);
“the new bridges” means the new bridges or tunnels proposed to be constructed under this Order to carry highways over or under an authorised busway; and
“the original bridges” means the bridges or tunnels authorised to be constructed under the 1855 Act.

Agreements with street authorities

- 14.—(1) A street authority and the Council may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under an authorised busway) under the powers conferred by this Order;
 - (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under an authorised 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(1) (power to execute street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question, and
 - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

Supplementary

Discharge of water

15.—(1) The Council may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

(4) The Council shall 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 Council 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(14).

(7) In this article—

(14) 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 or a local authority;
- (b) “watercourse” includes all rivers, streams, ditches, canals, 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.

Protective works to buildings

16.—(1) Subject to the following provisions of this article, the Council may at its own expense and from time to time carry out such protective works to any building within the Order limits as the Council considers to be necessary or expedient.

(2) Protective 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; or
- (b) after the completion of the construction of that part of the authorised works, 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 Council may enter and survey any building falling within paragraph (1) and any land belonging to it.

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

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

the Council 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 their intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), 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 protective works or to enter the building or land to be referred to arbitration under article 54 (arbitration).

(7) The Council 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—

- (a) protective 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 protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,
the Council shall compensate the owners and occupiers of the building for any damage sustained by them.

(9) Nothing in this article shall relieve the Council from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;
- (b) any reference to a building within a specified distance of a work includes—
 - (i) in the case of a work under the surface of the ground, a reference to any building within the specified distance of the point on the surface below which the work is situated, and
 - (ii) where a work has not commenced, a reference to a building within the specified distance of the proposed site of the work; and
- (c) “protective 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; and
 - (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.

Power to survey and investigate land

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

- (a) survey or investigate any land within the Order limits;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the Council thinks fit on any such land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the Council—

- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
- (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The Council shall make compensation for any damage occasioned by the exercise of the powers conferred by this article to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Town and country planning

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⁽¹⁵⁾ (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⁽¹⁶⁾, or 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 works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(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⁽¹⁷⁾ 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 (cases in which land is to be treated as operational land for the purposes of that Act).

(4) Translink shall be regarded as a road transport undertaking for the purposes of section 262(1) of the 1990 Act (meaning of “statutory undertakers”).

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

19.—(1) The Council may acquire compulsorily—

- (a) so much of the land shown on the deposited plans within the limits of deviation for the scheduled works shown on those plans and described in the book of reference as may be required for, or for purposes ancillary to, the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain land) to this Order (being land shown on the deposited plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes ancillary to the construction of Translink.

(2) Without prejudice to the generality of paragraph (1), the land which may be acquired compulsorily under that paragraph shall include land which is or will be required—

⁽¹⁵⁾ S.I. 1969/17.

⁽¹⁶⁾ S.I. 1975/148.

⁽¹⁷⁾ S.I. 1999/1892.

- (a) for use in mitigating the effect on the environment of any of the works authorised by this Order;
 - (b) for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of any of the works authorised by this Order; or
 - (c) for the purpose of being given in exchange for land forming part of a common, open space or fuel or field garden allotment which is acquired under paragraph (1).
- (3) Nothing in this Order shall authorise the Council to acquire compulsorily—
- (a) any interest in designated land belonging to any local authority or parish council; and
 - (b) any interest in the lands within the limits of deviation delineated on the deposited plans and thereon numbered 62, 63, 67 and 72 in the Borough of Luton.
- (4) In this article—
- “apparatus” has the same meaning as in article 7(2) (power to keep apparatus in streets) and includes apparatus belonging to a statutory utility;
- “common” includes any land subject to be enclosed under the Inclosure Acts 1845 to 1882⁽¹⁸⁾ and any town or village green;
- “designated land” means the land delineated on the deposited plans and thereon numbered 58, 58a, 67, 81, 87, 88, 91, 94 and 97 in the District of South Bedfordshire;
- “fuel or field garden allotment” means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act;
- “local authority” means the County Council, the Council and South Bedfordshire District Council;
- “parish council” means the parish council of any parish within the area of a local authority;
- “open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground; and
- “statutory utility” means a licence holder within the meaning of Part 1 of the Electricity Act 1989⁽¹⁹⁾, a public gas transporter within the meaning of Part 1 of the Gas Act 1986⁽²⁰⁾, a water undertaker within the meaning of the Water Industry Act 1991⁽²¹⁾, a sewerage undertaker within Part 1 of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.
- (5) This article is subject to article 24 (temporary use of land for construction of works).

Application of Part 1 of the Compulsory Purchase Act 1965

- 20.**—(1) Part 1 of the 1965 Act, insofar 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⁽²²⁾ applies, and
 - (b) as if this Order were a compulsory purchase order under that Act.
- (2) Part 1 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

⁽¹⁸⁾ 1845 c. 118. 1846 c. 70. 1847 c. 111. 1848 c. 99. 1849 c. 83. 1851 c. 10. 1852 c. 79. 1857 c. 31. 1859 c. 43. 1868 c. 89. 1876 c. 56. 1878 c. 56. 1879 c. 37. 1882 c. 15.

⁽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.

⁽²²⁾ 1981 c. 67.

- (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 the Compulsory Purchase (Vesting Declarations) Act 1981

21.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(23) shall apply as if this Order were a compulsory purchase order.

(2) That Act, as so applied by paragraph (1), shall have effect with the following modifications.

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

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

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

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

(5) In that section, for subsections (5) and (6) there shall be substituted—

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

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion, or
- (b) he holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in the London Gazette and in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land by article 20 (application of Part 1 of the 1965 Act).

Power to acquire new rights

22.—(1) The Council may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 19 (power to acquire land) 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 (modification of compensation and compulsory purchase enactments for creation of new rights) to this Order), where the Council acquires a right over land under paragraph (1) the Council shall not be required to acquire a greater interest in it.

(3) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) 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 19 (power to acquire land), 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 within the Order limits 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 works authorised by this Order; and in that paragraph “statutory utility” has the same meaning as in article 19(4) (power to acquire land).

Rights under or over streets

23.—(1) The Council may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil and air-space for those purposes or any other purpose ancillary to the construction and maintenance of Translink.

(2) The power under paragraph (1) may be exercised in relation to a street without the Council being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), 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 1 of the 1961 Act.

(4) Paragraphs (2) and (3) 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 onto the street.

(5) Compensation shall not be payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary possession of land

Temporary use of land for construction of works

24.—(1) The Council 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 (land of which temporary possession may be taken) 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 Council shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The Council 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 one year beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 8 (land of which temporary possession may be taken) to this Order.

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

(5) The Council 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 1 of the 1961 Act.

(7) Without prejudice to article 53 (no double recovery), 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) Subject to paragraphs (9) and (10), the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1).

(9) The Council shall not be precluded from acquiring new rights over any part of that land under article 22 (power to acquire new rights).

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

(11) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 20(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(12) In this article "building" includes structure or any other erection.

Compensation

Disregard of certain interests and improvements

25.—(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

26.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 20 (application of Part 1 of the 1965 Act)) 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 manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”), and
- (b) a copy of this article is served on the owner with the notice to treat.

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

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

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

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice, or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice, but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Council is authorised to acquire compulsorily under this Order.

(8) If the Council agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, and

(b) that material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Council is authorised to acquire compulsorily under this Order.

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

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

Extinction or suspension of private rights of way

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

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

(b) on the entry on the land by the Council under section 11(1) of the 1965 Act, whichever is the sooner.

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

(3) 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 1 of the 1961 Act.

(4) 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 (provisions relating to statutory undertakers etc.) to this Order applies.

Time limit for exercise of powers of acquisition

28.—(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 1 of the 1965 Act, as applied to the acquisition of land by article 20 (application of Part 1 of the 1965 Act); and

(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 21 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The power conferred by article 24 (temporary use of land for construction of works) to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent the Council from remaining in possession of land in accordance with article 24 (temporary use of land for construction of works) 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 TRANSLINK

Power to operate and use Translink

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

(2) Subject to paragraph (4) and to article 42 (power to transfer undertaking), the Council shall, for the purpose of operating Translink, have the exclusive right—

- (a) to use the authorised busway and other apparatus used for the operation of Translink, and
- (b) to occupy any part of the street in which that apparatus is situated.

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

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

Power to charge fares

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

Traffic control

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

(2) Unless in the case they are the traffic authority, the Council—

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

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs shall include a power to give directions to the Council as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) shall be exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on or near any street along which Translink is run shall consult with the Council as to the placing of any traffic sign which would affect the operation of Translink.

(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

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

- (a) establish bus lanes on the roads specified in column (2) and along the lengths and between the points specified in column (3) of Part 1 of Schedule 9 (traffic regulation orders) to this Order;
 - (b) prohibit vehicular access in the manner specified in Part 2 of Schedule 9 (traffic regulation orders) 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; and
 - (c) revoke any traffic regulation order in so far as it is inconsistent with any prohibition, restriction or other provision made by the Council under this paragraph.
- (2) The Council shall not exercise the powers of this article unless the Council has—
- (a) given not less than 12 weeks' notice in writing of their 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 Council's intention, specify in writing.

(3) Any prohibition, restriction or other provision made by the Council under paragraph (1) 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 9 (traffic regulation orders) to which the prohibition, restriction or other provision is subject).

Power to fell or lop trees overhanging the authorised busway

33.—(1) The Council may fell or lop any tree or shrub near any part of the authorised 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 Translink or any apparatus used for the purposes of Translink; or
- (b) from constituting a danger to passengers or other persons using Translink.

(2) In exercising the powers in paragraph (1), the Council shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of the compensation, shall be determined under Part 1 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 the authorised busway

34.—(1) Any person who—

- (a) trespasses on the authorised busway; or
- (b) trespasses upon any land of the Council in dangerous proximity to the authorised busway or to any apparatus used for or in connection with the operation of Translink,

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 busway includes causing or permitting a vehicle to be upon any part of the authorised busway which is not a public highway 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 busway was clearly exhibited and maintained at the stopping place on the authorised busway nearest the place where the offence is alleged to have been committed.

Service subsidy agreements

35. Any service subsidy agreement relating to the operation of guided bus services operating over Translink shall be excluded from section 89(1) of the 1985 Act.

Concessionary travel

36. Sections 93 to 102 and 112 of the 1985 Act (which make provision for travel concession schemes) shall apply to guided bus services operating over Translink, notwithstanding that such services may not be eligible services as defined in section 94(4) of that Act.

Registration of busway services

37. For the purposes of the application of Part 1 of the 1985 Act but subject to article 38 (substitute road services), the authorised busway shall be a road within the meaning of section 137(1) of that Act.

Substitute road services

38. The Council may provide or secure the provision by other persons of services for the carriage of passengers by road (“substitute services”) where Translink 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 1985 Act shall not apply to any substitute services.

Obstruction of construction of Translink

39. Any person who, without reasonable excuse, obstructs another person from constructing Translink shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power to make byelaws

40.—(1) The Council may make byelaws regulating the use and operation of, and travel on, Translink, the maintenance of order on Translink and on busway premises or other facilities provided in connection with Translink and the conduct of all persons including employees of the Council while on busway premises.

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

- (a) with respect to tickets issued for travel on Translink, 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 Translink or other facilities provided in connection with Translink including the recovery of costs involved in removing such an obstruction or interference;
- (c) with respect to the prevention of nuisances or trespass on Translink;
- (d) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within busway premises;
- (e) for the safe custody and re-delivery or disposal of any property accidentally left on busway premises and for fixing the charges made in respect of any such property; and
- (f) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of Translink or on busway premises.

(3) In paragraph (1) references to “busway premises” are references to premises of the Council used for or in connection with the operation of Translink but do not include references to the inside of a guided bus or premises within the boundary of a street.

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

(5) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (4), if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public, or hindrance to the Council in the operation of the busway, the Council may summarily take action to obviate or remove the danger, annoyance or hindrance.

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

(7) At least 28 days before applying for any byelaws to be confirmed under this article, the Council shall publish in such manner as may be approved by the Secretary of State a notice of the Council’s 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 offices of the Council and shall at all reasonable hours be open to public inspection without payment.

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

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

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

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

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

- (a) that the byelaws were made by the Council;
 - (b) that the copy is a true copy of the byelaws;
 - (c) that on a specified date the byelaws were confirmed by the Secretary of State; and
 - (d) the date when the byelaws came into operation,
- shall be prima facie evidence of the facts stated in the certificate.

Power to contract for police services

41.—(1) The Council 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 busway, including at any busway premises.

- (2) Any such agreement may provide for—
 - (a) the Council to make payment or otherwise 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⁾.

PART 5

MISCELLANEOUS AND GENERAL

Power to transfer undertaking

42.—(1) Notwithstanding any powers that may be exercised by the Council under section 10 of the Transport Act 1968⁽²⁶⁾, the Council may with the consent of the Secretary of State enter into and carry into effect an agreement to sell, lease, charge or otherwise dispose of, on such terms and conditions as the Council thinks fit, the whole or any part of the undertaking comprised within Translink and any land held by the Council for the purpose of, or in connection with, Translink.

(2) Without prejudice to the generality of paragraph (1) a transfer agreement under paragraph (1) may provide for—

- (a) the construction, maintenance, use and operation of Translink or any part thereof by another person and as to any other matter incidental or subsidiary thereto or consequential thereon; and
- (b) the vesting in another person of all or any of the functions of the Council under this Order.

(3) A transfer agreement may be entered into so as to transfer and vest such property and functions in any other person for such period as may be specified in that agreement or for so long as the agreement remains in force and where such an agreement is entered into references in this Order to the Council shall, to the extent that the agreement so provides, have effect as references to the transferee.

⁽²⁴⁾ 1996 c. 16.

⁽²⁵⁾ 2003 c. 20.

⁽²⁶⁾ 1968 c. 73.

(4) Without prejudice to the powers of the Council to terminate or vary a transfer agreement, a transfer agreement may specify circumstances in which that agreement shall cease to have effect before the expiry of any period specified in any such agreement.

(5) A transfer agreement may include such supplementary, incidental, transitional and consequential provisions as the Council may consider to be necessary or expedient.

(6) Without prejudice to the generality of paragraph (1), a transfer agreement may provide for the exercise by a transferee, or the Council and a transferee jointly, of all or any of the powers of the Council (whether under this Order or under any other enactment) in respect of Translink or any part thereof and for the transfer to and vesting in a transferee, or the Council and a transferee jointly, of those works or any part thereof together with the rights and obligations of the Council in relation thereto.

(7) Subject to paragraph (1), the exercise by a transferee or the Council and a transferee jointly, of any of the powers of this Order shall be subject to all statutory and contractual provisions in relation thereto as would apply if those powers were exercised by the Council alone and accordingly those provisions with any necessary modifications shall apply to the exercise of such powers by another person, or by the Council and a transferee jointly.

(8) Upon expiry of any period specified in a transfer agreement in accordance with paragraph (3), or upon a transfer agreement being terminated or otherwise ceasing to have effect, the functions and property of the Council which were transferred by that agreement shall, by virtue of this paragraph but subject to the effect of any further transfer agreement entered into by the Council, be revested in the Council, but such revesting shall not make the Council subject to any of the liabilities of the transferee other than any continuing duties imposed by this Order.

(9) Notwithstanding anything in any transfer agreement, any duty arising under this Order to complete the construction of, or to maintain or operate any works in respect of which the Council's functions are transferred by a transfer agreement, together with such rights and property as are required for the discharge of that duty, shall revert to the Council in the event of the abandonment of those works or in the event that the works are not completed within 10 years of the commencement of construction of those works.

(10) Unless the transfer agreement otherwise provides, if a duty to complete the construction of, to maintain or operate any works reverts to the Council under paragraph (9), the transfer agreement shall terminate and all the functions and property of the Council which were transferred by that agreement shall be revested in the Council in accordance with paragraph (8).

(11) Within 21 days of the revesting in the Council of any property or functions pursuant to paragraph (8) or (10) or the reversion to the Council of any duty, rights or property pursuant to paragraph (9), the Council shall serve notice on the Secretary of State, providing him with particulars of the revesting or reversion concerned.

(12) For the avoidance of doubt nothing in section 15(2) of the Transport Act 1968 (restriction or alteration of charges) shall apply in relation to the operation of the Translink by any person other than the Council, but this paragraph is without prejudice to any provision with respect to charges that may be made in an agreement under paragraph (1) or (2).

(13) In this article, unless the context otherwise requires—

“functions” includes powers, duties and obligations;

“transferee” means a person to whom all or any of the property or functions of the Council have been transferred by virtue of a transfer agreement; and

“transfer agreement” means an agreement entered into under paragraph (1).

Disclosure of confidential information

43. A person who—

- (a) enters a factory, workshop or workplace in pursuance of the provisions of article 16 (protective works to buildings) or 17 (power to survey and investigate land); and
- (b) discloses to any person any information obtained by him relating to any manufacturing process or trade secret,

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

Public open space

44.—(1) The Council shall not under the powers of this Order take possession of any part of the existing open space until the Council has taken possession of so much of the replacement land as is equivalent in area to the amount of the existing open space that is required by the Council for the authorised works.

(2) Upon the Council taking possession of so much of the existing open space as is required for the authorised works that land shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) Not less than 28 days before taking up possession of the replacement land the Council shall—

- (a) publish a notice in a local newspaper circulating in the area of the replacement land; and
- (b) display a copy of the notice in a conspicuous position in or adjacent to the replacement land.

(4) A notice published and displayed pursuant to paragraph (3) shall—

- (a) identify which of either of the areas of land identified in paragraph (7)(b)(ii) or (iii) shall, together with the land identified in paragraph (7)(b)(i) be occupied as replacement land by the Council for the purposes of paragraph (1); and
- (b) specify a date, which shall be a date not less than 28 days after the date of publication of a notice under paragraph (3), after which the Council shall be at liberty to enter onto the replacement land for the purposes of paragraph (5).

(5) The Council shall lay out as replacement open space before the authorised works are first brought into public use so much of the replacement land of which possession has been taken under paragraph (1).

(6) As soon as Houghton Regis Town Council has certified that the land referred to in paragraph (3) has been laid out to its reasonable satisfaction that land shall vest in Houghton Regis Town Council subject to the like rights, trusts and incidents as attached to so much of the existing open space of which possession has been taken under paragraph (1).

(7) In this article—

- (a) “the existing open space” means the open space comprised in the land delineated on the deposited plans and thereon numbered 4, 12 and 12b in the District of South Bedfordshire and coloured green on the open space plan;
- (b) “the replacement land” means—
 - (i) the land delineated on the deposited plans and thereon numbered 9 in the District of South Bedfordshire and coloured blue on the open space plan; and either
 - (ii) the land coloured pink on the open space plan; or
 - (iii) the land coloured orange on the open space plan.
- (c) “open space plan” means the plan so headed and attached to the deposited plans.

Application of landlord and tenant law

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

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

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

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

Statutory undertakers etc.

46. The provisions of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order shall have effect.

Application of existing enactments

47.—(1) In this article—

“the 1855 Act” means the Luton, Dunstable and Welwyn Junction Railway Act 1855⁽²⁷⁾;

“the Company” means British Railways Board (Residuary) Limited;

“the former railway” means so much of the former Luton, Dunstable and Welwyn railway as was authorised by the 1855 Act and is situated within the Order limits;

“accommodation bridges” means the accommodation bridges authorised to be constructed by the 1855 Act in connection with the former railway as are within the limits of deviation for Work No. 3;

“the relevant date” means—

- (a) in relation to so much of the former railway as is owned by the Council at the date of the coming into force of this Order, that date; or
- (b) in relation to any part of the former railway which at that date is not so owned, the earlier of the date upon which the Council acquires that part or the date upon which the Council takes entry for the purpose of constructing the authorised works.

(2) Except as may be otherwise provided in this Order and subject to paragraph (3), as from the relevant date the former railway or any part thereof shall continue to be subject to all statutory and other provisions applicable to the former railway, or any part thereof, at that date (in so far as the same are still subsisting and capable of taking effect) and the Council shall to the exclusion of the Company be entitled to the benefit of, and to exercise, all rights, powers and privileges and be subject to all obligations statutory or otherwise relating to the former railway (in so far as the same

(27) 1855 c. cxlvi.

are still subsisting and capable of taking effect) to the intent that the Company shall be released from all such obligations.

(3) In the event that the Council proceeds with the demolition of the accommodation bridges, all of the powers and obligations conferred or imposed upon the Council by the 1855 Act shall in relation to the accommodation bridges cease to have effect.

(4) Except as may otherwise be provided in this Order, any enactment by which the former railway was authorised shall have effect subject to the provisions of this Order.

Power of Council and County Council to make agreements

48. The Council and the County Council may enter into and carry into effect agreements with the other in respect to the construction, maintenance, use and operation of Translink or any part or parts thereof and as to any other matters incidental or subsidiary thereto or consequential thereon.

For the protection of Council and County Council in the event of transfer

49. If the powers of the Council under this Order to construct the authorised works or any part of those works are transferred to another person by virtue of a transfer agreement under article 42 (power to transfer undertaking), the provisions of Part 6 of Schedule 11 (protective provisions) to this Order shall apply for the protection of the Council and the County Council.

Protective provisions

50. The provisions of Schedule 11 (protective provisions) to this Order shall have effect.

Certification of plans etc.

51. The Council shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are, respectively, the book of reference, sections and plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of its contents.

Service of notices

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

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

(3) For the purposes of section 7 of the Interpretation Act 1978(28) 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—

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- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it), and
 - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

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

Arbitration

54. Any difference under any provision of this Order unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to 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

22nd November 2006

SCHEDULES

SCHEDULE 1

Articles 2 and 4

SCHEDULED WORKS

In the County of Bedfordshire, District of South Bedfordshire –

Work No. 1 -	A guided busway commencing at a point 15 metres south of the junction of the entrance to the Ivinghoe Business Centre with Blackburn Road and terminating on the bridge over the M1 Motorway at a point 18 metres east of the centre point of that bridge including the relocation of electricity pylons, a crossing on the level at Court Road and the reconstruction of bridges over Church Street (South Bedfordshire) and Skimpot Road.
Work No. 1A -	An emergency maintenance access and cycle track commencing at a point 62 metres south of the junction of the entrance to Ivinghoe Business Centre with Blackburn Road and terminating in Hatters Way at a point 81 metres south west of the bridge over the M1 Motorway, including the relocation of electricity pylons, provision of access from the path off Jeans Way, a crossing on the level at Court Road and the reconstruction of bridges over Church Street (South Bedfordshire) and Skimpot Road.
Work No. 1B -	An emergency maintenance access and cycle track commencing by a junction with Work No. 1A at a point 45 metres east of the eastern corner of No. 3 Portland Ride and terminating in Portland Ride, 15 metres east of that point.
Work No. 1C -	An emergency maintenance access and cycle track commencing by a junction with Work No. 1A at a point 63 metres south east of the eastern corner of No. 3 Portland Ride and terminating at a point on the combined footpath/cycle track between Crabtree Way and Readers Close, 32 metres west of the kerb line of Crabtree Way, including a pedestrian crossover of Work No. 1.
Work No. 1D -	A bridge incorporating a footpath and cycle track commencing on Dog Kennel Path,

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- (footpath FP1), at a point 36 metres south of the intersection of that footpath with the parish boundaries of the Town and Parish of Houghton Regis and Dunstable and terminating on that footpath at a point 72 metres south of that boundary including the demolition of the footbridge carrying Dog Kennel Path over the disused railway.
- Work No. 1E - An emergency maintenance access and cycle track commencing by a junction with Work No. 1A at a point 50 metres south east of the disused level crossing over Court Road and terminating at a point 13 metres south of that level crossing.
- Work No. 1F - A footpath and cycle track commencing at a point 14 metres north east of the junction of the Dukeminster Trading Estate road with Church Street and terminating by a junction with Work No. 1A at a point 94 metres north east of that junction.
- Work No. 1G - A busway commencing by a junction with Work No. 1 at a point 51 metres west of the junction of Church Street with Station Road and terminating at a point 47 metres north of the junction of those streets.
- Work No. 1H - A realignment and widening of Church Street, commencing at a point 11 metres east of the junction of that street with Station Road and terminating on Luton Road at a point 61 metres east of that junction.
- Work No. 1J - A busway commencing by a junction with Work No. 1 at a point 321 metres south east of the junction of Church Street with Station Road and terminating in Station Road at a point 127 metres south east of that junction.
- Work No. 1K - An emergency maintenance access and cycle track commencing by a junction with Work No. 1A at a point 289 metres south east of the junction of Church Street with Station Road and terminating in Station Road at a point 132 metres south east of that junction.
- Work No. 1L - An emergency maintenance access and cycle track commencing by a junction with Work No. 1A at a point 65 metres west of the bridge over Skimpot Road and terminating at footpath FP41 on the western kerb line of the roundabout at the junction of that road with Hatters Way.

Work No. 1M -	A road, being a realignment of Chaul End Road, commencing at the junction of Chaul End Road with the roundabout at Skimpot Road and Hatters Way and terminating in Chaul End Road at a point 223 metres east of the bridge over Skimpot Road.
Work No. 1N -	A busway commencing by a junction with Work No. 1M at a point 128 metres east of the bridge over Skimpot Road and terminating by a junction with Work No. 1 at a point 150 metres east of that bridge including provision for a cycle track to Work No. 1A.
Work No. 1P -	A bridge incorporating a footpath and cycle track commencing by a junction with Work No. 1A at a point 83 metres south west of the former railway bridge over the M1 Motorway and terminating in Bradley Road at a point 87 metres north west of that bridge, including the provision of pedestrian access to footpath FP10.

In the County of Bedfordshire, District of South Bedfordshire and Borough of Luton –

Work No. 2 -	A guided busway, commencing in the district of South Bedfordshire by a junction with the termination of Work No. 1 and terminating in the Borough of Luton at a point 164 metres west of the junction of Church Street with Station Road including a relocation of the pipe between Hatters Way and Leicester Road, the reconstruction of bridges carrying the disused railway over Kingsway, Dunstable Road and Telford Way, the demolition of bridges carrying the disused railway over New Bedford Road and Guildford Street and its footway, and a culvert over the River Lea or Lee.
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In the Borough of Luton –

Work No. 2A -	A busway to Chaul End Lane commencing by a junction with Work No. 2 at a point 62 metres north of the roundabout crossing Hatters Way and terminating in Chaul End Lane at a point 89 metres north of that roundabout.
Work No. 2B -	A busway from Chaul End Lane commencing in Chaul End Lane at a point 85 metres north of the roundabout crossing Hatters Way and terminating by a junction with Work No. 2 at a point 73 metres north east of that roundabout.

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- Work No. 2C - A footpath commencing at a point 42 metres north west of the bridge carrying Clifton Road over the disused railway and terminating on the footway of Maple Road East at a point 52 metres north north west of that bridge.
- Work No. 2D - A reconstruction of the bridge carrying Clifton Road over the disused railway and Hatters Way and a realignment of that road and Maple Road East to its junction with Oak Road commencing in Clifton Road at a point 27 metres north of its junction with Wimborne Road and terminating in Maple Road East at its junction with Oak Road.
- Work No. 2E - A cycle track commencing in New Bedford Road at a point 12 metres south east of the bridge carrying the disused railway over New Bedford Road and terminating in Guildford Street at a point 60 metres north west of the junction of Guildford Street with Bridge Street including a culvert over the River Lea or Lee.
- Work No. 3 - A guided busway commencing by a junction with the termination of Work No. 2 and terminating at a point 65 metres west of the western corner of the multi-storey car park at Luton Airport Parkway Station, incorporating a new viaduct over Church Street, the reconstruction of the bridge carrying Crawley Green Road over the disused railway, the removal of two disused accommodation footbridges over that railway, the reconstruction of the bridge carrying that railway over Kimpton Road and the provision of a crossing at the access to Luton Retail Park on the level from Gypsy Lane.
- Work No. 3A - A realignment of the highway at the bus standing area and car park adjacent to Luton Airport Parkway Station commencing at a point 72 metres west of the western corner of the multi-storey car park at that station and terminating by a junction with Work No. 5 at a point 19 metres south west of the western corner of the multi-storey car park.
- Work No. 4 - A realignment of the highway at the bus standing area and car park adjacent to Luton Airport Parkway Station commencing by a junction with Work No. 3 at a point 88 metres west of the western corner of the multi-storey car park at that station and terminating by a junction with Work No. 3A at a point 30 metres

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Work No. 5 -	west of the western corner of the multi-storey car park. A busway commencing by a junction with Work No. 4 at a point 13 metres west of the western corner of the multi-storey car park at Luton Airport Parkway station and terminating 13 metres south of the centre of the roundabout crossing Airport Way and Percival Way including the construction of bridges over the railway between Harpenden and Luton Airport Parkway and Airport Way.
Work No. 5A -	A footway to Airport Way from Lower Harpenden Road commencing at a point 113 metres east of the centre of the roundabout at the junction of Parkway Road with Lower Harpenden Road and terminating in the footway alongside Airport Way at a point 179 metres east of that junction.
Work No. 5B -	A footway commencing in the footway alongside Airport Way at a point 99 metres north east of the bridge carrying Airport Way over the railway between Harpenden and Luton Airport Parkway and terminating at a point 55 metres south of the centre of the roundabout crossing Kimpton Road and Airport Way.
Work No. 5C -	A road, being a diversion of an airport accommodation road, commencing at a point in that accommodation road 173 metres south east of the centre of the roundabout crossing Kimpton Road and Airport Way and terminating at a point 184 metres east of that roundabout including the stopping up of the accommodation road between Barratt Industrial Park and the commencement of Work No. 5C.

SCHEDULE 2

Articles 4 and 19

ACQUISITION OF CERTAIN LAND

<i>(1)</i> Area	<i>(2)</i> Number of land shown on deposited plans	<i>(3)</i> Purpose for which land may be acquired
County of Bedfordshire		
District of South Bedfordshire	1, 2	Provision of stopping places and access for construction and operation of the authorised works

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
	6	Relocation of electricity pylons and working site
	8	Provision of access
	9	Provision of exchange land
	20, 23	Provision of access for construction and operation of the authorised works
	24, 26, 27, 28, 35, 36, 37, 37a, 38, 39	Provision of highway modification
	25	Provision of bus turnaround
	42, 43, 44, 80	Provision of access for construction and maintenance
	58a	Provision of ecological mitigation works
	91, 92	Provision of temporary working site, access and ecological mitigation works
Borough of Luton	1, 2, 4, 6, 35, 36, 37, 61, 62, 63, 85, 153, 156, 159	Provision of access for construction and maintenance
	51, 56	Provision of access for construction and modification of structures
	98	Modification to accommodate removal of existing structure
	104, 105, 106, 106a, 107	Provision of pedestrian access
	126, 127, 128	Provision of drainage
	162	Provision of stopping places and construction and operation of authorised works

SCHEDULE 3

Article 6

STREETS SUBJECT TO ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
County of Bedfordshire		

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
District of South Bedfordshire	Court Road	Kerb line to be realigned between points KB1, KB2 and KB3, between points KB4 and KB5, between points KB6 and KB7 and between points KB8 and KB9
	Kingsway/Court Drive	Kerb line to be realigned between points KB9A and KB9B
	Court Drive	Kerb line to be realigned between points KB10, KB11 and KB12
	Court Drive/Vernon Place	Kerb line to be realigned between points KB13, KB14, KB15 and KB16
	Queensway/High Street North	Kerb line to be realigned between points KB17, KB18 and KB19
	Church Street	Kerb line to be realigned between points KB20, KB21 and KB22 and between points KB23 and KB23A
	Church Street/Luton Road	Kerb line to be realigned between points KB24 and KB25
	Church Street/Station Road	Kerb line to be realigned between points KB26, KB27 and KB28
	Luton Road/Station Road	Kerb line to be realigned between points KB33, KB34, KB35, KB36 and KB36A
Borough of Luton	New Bedford Road	Kerb line to be realigned between points KB1 and KB2, between points KB3 and KB4, between points KB5 and KB6 and between points KB7 and KB8
	Guildford Street	Kerb line to be realigned between points KB9 and KB10, between points KB13 and KB14, between points KB15, KB16, KB17 and KB15 and between points KB18 and KB19

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SCHEDULE 4

Article 9

STREETS TO BE STOPPED UP

PART 1

STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
County of Bedfordshire			
District of South Bedfordshire	Footpath FP1 (Dog Kennel Path)	Between points F1, F2 and F3	Work No. 1D
	Footpath FP2	Between points F2, F4 and F5	Work No. 1A and new footpath between points F5 and F6
	Footpath FP17	Between points F7 and F8	Works Nos. 1A and 1K
	Footpath FP7	Between points F9 and F10	Works Nos. 1A and 1L
	Footpath FP41	Between points F10 and F11	Work No. 1L
	Chaul End Road	Between points S1, S2 and S3	Work No. 1M
	Footpath FP10	Between points F13 and F14 (in the Borough of Luton) and F15, F16 and F17	Work No. 1P
Borough of Luton	Footpath FP10	Between points F13 and F14 and F15, F16 and F17 (in the District of South Bedfordshire)	Work No. 1P
	Footway to Airport Way from Lower Harpenden Road	Between points P1, P2 and P3 and between points F24, P4 and P5	Works Nos. 5A and 5B
	Footpath FP4	Between points F18 (in the District of South Bedfordshire), F19, F20 and F21 and F22 (in the District of South Bedfordshire)	Footpath between F18, F23 and F24 and between F24 and F21 (Work No. 5B)

PART 2

STREETS FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
County of Bedfordshire		
District of South Bedfordshire	Bridleway BW20	Between points F8 and F9
	Footpath FP4	Between points F21 (in the Borough of Luton) and F22

SCHEDULE 5

Article 10

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
County of Bedfordshire		
District of South Bedfordshire	Blackburn Road	Within the Order limits
	Portland Ride	Within the Order limits
	High Street North	Within the Order limits
	Footpath FP1 (Dog Kennel Path)	Within the Order limits
	Arenson Way	Within the Order limits
	Footpath FP2	Within the Order limits
	Court Road	Within the Order limits
	Kingsway	Within the Order limits
	Court Drive	Within the Order limits
	Supermarket access road off Court Drive (Asda)	Within the Order limits
	Dunstable Leisure Centre access road off Court Drive	Within the Order limits
	Vernon Place	Within the Order limits
	Queensway	Within the Order limits
	Dukeminster Trading Estate access road	Within the Order limits
	Church Street	Within the Order limits
	McDonald's Restaurant access road off Boscombe Road	Within the Order limits
Luton Road	Within the Order limits	

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
Borough of Luton	Station Road	Within the Order limits
	Footpath FP17	Within the Order limits
	Eastern Avenue	Within the Order limits
	Footpath FP7	Within the Order limits
	Bridleway BW20	Within the Order limits
	Skimpot Road	Within the Order limits
	Footpath FP41	Within the Order limits
	Chaul End Road	Within the Order limits
	Hatters Way	Within the Order limits
	Skimpot Road	Within the Order limits
	Footpath FP10	Within the Order limits
	Bradley Road	Within the Order limits
	Stanton Road	Within the Order limits
	Leicester Road	Within the Order limits
	Chaul End Lane	Within the Order limits
	Kingsway	Within the Order limits
	Clifton Road	Within the Order limits
	Maple Road East	Within the Order limits
	Oak Road	Within the Order limits
	Kenilworth Road	Within the Order limits
	J Sainsbury plc car park	Within the Order limits
	Dunstable Road	Within the Order limits
	Hatters Way	Within the Order limits
	Telford Way	Within the Order limits
	Access road and path off Telford Way and New Bedford Road	Within the Order limits
	New Bedford Road	Within the Order limits
	Guildford Street	Within the Order limits
	Mill Street	Within the Order limits
	Station Road	Within the Order limits
	Bute Street	Within the Order limits
Church Street	Within the Order limits	
Crawley Green Road	Within the Order limits	

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
	Windmill Road	Within the Order limits
	Thistle Road	Within the Order limits
	Kimpton Road	Within the Order limits
	Gipsy Lane	Within the Order limits
	Luton Retail Park access road	Within the Order limits
	Parkway Road and station access	Within the Order limits
	Parkway Road	Within the Order limits
	Footpath FP4	Within the Order limits
	Airport Way	Within the Order limits
	Airport Approach Road	Within the Order limits

SCHEDULE 6

Article 11

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of Access</i>
County of Bedfordshire	
District of South Bedfordshire	Arenson Way
	Church Street
	Station Road
	Chaul End Road
	Hatters Way
Borough of Luton	Kingsway
	Telford Way
	Mill Street
	Church Street

SCHEDULE 7

Article 22

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

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

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973⁽²⁹⁾ shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

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

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

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

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

Adaptation of the 1965 Act

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

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

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

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

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which

(29) 1973 c. 26.

the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following—

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

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

the Luton Dunstable Translink Order 2006⁽³⁰⁾ (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

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

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

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

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

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

⁽³⁰⁾ S.I. 2006/3118.

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

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

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

SCHEDULE 8

Article 24

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised Work</i>
County of Bedfordshire			
District of South Bedfordshire	17	Working site and access	Work Nos. 1, 1A and 1D
	18	Provision of access	Work Nos. 1, 1A and 1D
Borough of Luton	44, 44a	Working site and access	Work Nos. 2, 2C and 2D
	60, 78	Access	Work No. 2
	79, 80, 81	Working site and access	Work No. 2
	91	Working site and access	Work Nos. 2 and 2E
	96, 97	Access	Work Nos. 2 and 2E
	118, 120, 133	Access	Work No. 3
	121, 124	Working site and access	Work No. 3

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised Work</i>
	142	Working site and access	Work Nos. 3, 3A, 4, 5 and 5A
	151	Working site and access	Work Nos. 5, 5B and 5C
	152	Access	Work Nos. 5, 5B and 5C

SCHEDULE 9

Article 32

TRAFFIC REGULATION ORDERS

PART 1

BUS LANES

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street affected</i>	<i>(3)</i> <i>Description of regulation</i>
County of Bedfordshire		
District of South Bedfordshire	Court Drive	Bus lanes to be provided between points BL1 and BL2 and between points BL3 and BL4.
	Church Street	Bus lanes to be provided between points BL5 and BL6, between points BL7 and BL8, between points BL9 and BL10, between points BL11, BL12, BL13 and BL14, between points BL15 and BL16 and between points BL17 and BL18

PART 2

PROHIBITION OF ACCESS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street affected</i>	<i>(3)</i> <i>Description of regulation</i>
County of Bedfordshire		

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street affected</i>	<i>(3)</i> <i>Description of regulation</i>
District of South Bedfordshire	Court Drive	No entry except buses— southbound carriageway between points BL1 and BL4
	Church Street	No entry except buses – eastbound carriageway between the junction of Church Street with High Street North and point BL18

SCHEDULE 10

Article 46

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

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

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the Council compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

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

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

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

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 or Part 3 of the 1991 Act applies.

(6) In this paragraph—

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

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 9 (stopping up of streets) any statutory utility whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 9 (stopping up of streets) any statutory utility whose apparatus is under, in, upon, over, along or across the street may and, if reasonably requested so to do by the Council, shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it, or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as aforesaid.

(3) Subject to the following provisions of this paragraph, the Council shall pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of relocation works required in consequence of the stopping up of the street, and
- (b) the doing of any other work or thing rendered necessary by the execution of relocation works.

(4) If in the course of the execution of relocation works under sub-paragraph (2)—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Council, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) shall be reduced by the amount of that excess.

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

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

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) shall not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

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- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section, and
 - (b) the allowable costs shall be borne by the Council and the statutory utility in such proportions as may be prescribed by any such regulations.
- (8) In this paragraph—
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
 - “relocation works” means works executed, or apparatus provided, under sub-paragraph (2); and
 - “statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider.

Railway and navigation undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 8 (power to execute street works) to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority, or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purposes of sub-paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

SCHEDULE 11

Article 50

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS AND WATER UNDERTAKERS

1.—(1) For the protection of the undertakers referred to in this Part of this Schedule the following provisions of this Part of this Schedule, shall, unless otherwise agreed in writing between the Council and the undertaker concerned, have effect.

(2) In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(31)) belonging to or maintained by that undertaker; or
- (b) in the case of gas or water undertaker, any mains, pipes or other apparatus belonging to or maintained by such undertaker;

(not being, except in paragraph 2, apparatus in respect of which the relations between the Council and the undertakers are regulated by the provisions of Part 3 of the 1991 Act) and includes any structure for the lodging therein of apparatus or for giving access to apparatus;

“functions” includes powers and duties;

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

“plans” includes sections and method statements; and

“undertaker” means any person authorised to carry on, in any area within which the Council is by this Order authorised to purchase land or execute works, an undertaking for the supply of water or the supply, transportation or storage of gas or for the generation, transmission or supply of electricity; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained.

(3) The provisions of Schedule 10 (provisions relating to statutory undertakers etc) to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

2. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (temporary stopping up of streets) of this Order, the undertaker shall be at liberty at all times to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to inspect, repair, maintain, renew, alter, remove or use any apparatus which at the time of the stopping up or diversion was in that highway.

3.—(1) The Council, in the case of the powers conferred by article 16 (protective works to buildings) of this Order, shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of any undertaker or any interruption in the supply of electricity, gas or water, as the case may be, by that undertaker is caused, the Council shall bear and pay the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make reasonable compensation to the undertaker for any loss sustained by them; and
- (b) indemnify the undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the undertaker;

by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the Council with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of any undertaker or its contractors or workmen; and the undertaker shall give to the Council reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Council.

4. Notwithstanding anything in this Order or shown on the deposited plans the Council shall not acquire any apparatus under the powers of this Order otherwise than by agreement.

(31) 1989 c. 29.

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

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

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

(4) Any alternative apparatus to be constructed in land of the Council under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Council or in default of agreement settled by arbitration pursuant to article 54 (arbitration).

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as aforesaid and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Council to be removed under the provisions of this Part of this Schedule.

(6) Notwithstanding anything in sub-paragraph (5), if the Council gives notice in writing to the undertaker in question that the Council desires itself to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of the Council, that work, instead of being carried out by the undertaker in question, shall be carried out by the Council in accordance with plans and specifications and in a position agreed between the undertaker in question and the Council or in default of agreement by arbitration with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers.

(7) Nothing in sub-paragraph (6) shall authorise the Council to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Council affords to an undertaker facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the Council of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Council and the undertaker in question or in default of agreement settled by arbitration in accordance with sub-paragraphs (2) and (3).

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

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

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

7.—(1) Not less than 28 days before commencing to execute any works that are referred to in paragraph 5(2) and are near to or will or may affect any apparatus the removal of which has not been required by the Council under paragraph 5(2), the Council shall submit to the undertaker in question a plan, section and description of the works to be executed.

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

(3) Any requirements made by the undertakers under sub-paragraph (2) shall be made within 21 days after the submission to them of a plan, section and description under sub-paragraph (1).

(4) If an undertaker within 21 days after the submission to them of a plan, section and description shall, in consequence of the works proposed by the Council, reasonably requires the removal of any apparatus and gives written notice to the Council of that requirement, the foregoing provisions of this Part of this Schedule shall apply as if the removal of the apparatus had been required by the Council under paragraph 5(2).

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

8. The Council shall not be required to comply with paragraph 7(1) in a case of emergency but in that case it shall give to the undertakers in question notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable thereafter and shall comply with paragraph 7(2) so far as reasonably practicable in the circumstances.

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

10.—(1) Subject to the following provisions of this paragraph, the Council shall pay to the undertaker the costs, charges and expenses reasonably incurred by the undertaker in, or in connection

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with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2), less the value of any apparatus removed under the provisions of this Part of this Schedule (that value being calculated after removal). The Council shall also make compensation to that undertaker—

- (a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this Part of this Schedule); and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason of the execution, maintenance, use or failure of those works or otherwise by reason of the exercise by the Council of the powers of this Order.

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Council or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(3) For the purposes of sub-paragraph (2)—

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

(4) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant, to sub-paragraph (2)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(5) Sub-paragraphs (1) to (4) shall not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the construction of works under this Part of this Schedule shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section, and
- (b) the allowable costs shall be borne by the Council and the undertaker in such proportions as may be prescribed by any such regulations.

11. If, in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed the Council shall, so far as reasonably practicable, provide alternative means

of access to such apparatus which is no less convenient than the access enjoyed by the undertaker in question prior to the obstruction.

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

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

(3) Any difference arising between the Council and the undertakers under this Part of this Schedule shall be referred to and settled by arbitration under article 54 (arbitration).

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

PART 2

PROTECTION OF PUBLIC COMMUNICATIONS PROVIDER

14.—(1) For the protection of a public communications provider the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the public communications provider affected have effect.

15. The temporary stopping up or diversion of any highway under article 10 (temporary stopping up of streets) shall not affect any right of a public communications provider to inspect, maintain, adjust, repair or alter any apparatus which, at the time of the stopping up or diversion, is in that highway.

PART 3

PROTECTION FOR SEWERAGE UNDERTAKERS

16.—(1) For the protection of sewerage undertakers the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the sewerage undertaker concerned, have effect.

(2) In this Part of this Schedule—

“attenuation tank” means the surface water attenuation tank located within the lands numbered 33 on the deposited plans for the Order in the District of South Bedfordshire;

“the undertaker” means the sewerage undertaker for the area of the works or whose sewers are affected;

“construction” includes placing or altering; and “constructed” shall be construed accordingly;

“plan” includes sections and method statements;

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“sewer” means a public sewer within the meaning of the Water Industry Act 1991 and includes a disposal main within the meaning of that Act and reference to a sewer shall include a reference to the attenuation tank; and

“specified work” means so much of the works as will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, any sewer.

(3) The provisions of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

17.—(1) Before commencing the construction or renewal of any specified work, and in the case of any temporary work its removal, the Council shall submit to the undertaker plans of the work as described in sub-paragraph (3) and shall not commence that work until the undertaker has signified in writing its approval of those plans.

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

(a) may be given subject to reasonable conditions,

(b) shall not be unreasonably withheld, and

(c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

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

(4) For the purpose of the preparation of the plans the undertaker shall permit the Council to have access to plans in its possession and to any of its sewers.

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

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

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

(3) When works for the provision of any such new, altered or substituted sewer, or any such protective work forming part of any such new, altered or substituted sewer or any existing sewer of the undertaker, have been completed under this Part of this Schedule to the reasonable satisfaction of the undertaker, they shall be vested in and become maintainable by the undertaker.

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

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

(3) The undertaker shall give to the Council reasonable notice of any such claim or demand as is mentioned in sub-paragraph (2) and no settlement or compromise of the claim or demand shall be made without the agreement in writing of the Council.

(4) Nothing in sub-paragraph (1) or (2) shall impose any liability on the Council in respect of any damage to the extent that it is attributable to the act, neglect or default of the undertaker, its officers, servants, or, if not the Council, its contractors or agents.

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

(a) a sewer of better type, of greater capacity or of greater dimensions is placed in substitution for an existing sewer of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; or

(b) a sewer (whether an existing sewer or a sewer substituted for an existing sewer) is placed at a depth greater than the depth at which the existing sewer was,

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

(6) For the purposes of sub-paragraph (5) an extension of a sewer to a length greater than the length of an existing sewer shall not be treated as a placing of a sewer of greater dimensions than those of the existing sewer.

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

(8) Sub-paragraphs (1) and (5) to (7) shall not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

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- (a) the allowable costs of the construction of works under this Part of this Schedule shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by the Council and the undertaker in such proportions as may be prescribed by any such regulations.

20.—(1) An officer of the undertaker duly appointed for the purpose may, at any reasonable time and, if required by the Council, under their supervision and control, enter upon and inspect any specified work or any other works constructed under this Part of this Schedule.

(2) The approval by the undertaker of any plans, drawings, sections or specifications or the supervision by it of any work under this Part of this Schedule shall not (if it was done without negligence on the part of the undertaker, its officers, servants, or, if not the Council, its contractors or agents) exonerate the Council from any liability or affect any claim for damages by the undertaker.

21.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (temporary stopping up of streets) , the undertaker shall be at liberty at all times to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain, renew, protect or use any sewer which at the time of the stopping up or diversion was in that highway.

(2) Where, in consequence of this Order, any part of any street, bridleway or footpath in which any sewer is situated ceases to be part of the street, bridleway or footpath, the undertaker may exercise the same rights of access to such sewer as it enjoyed immediately before the coming into force of this Order, but nothing in this paragraph shall affect any right of the Council or of the undertaker to require alteration of such sewer under this Part of this Schedule.

22. The Council shall, so far as is reasonably practicable, so exercise the powers conferred by article 16 (protective works to buildings) as not to obstruct or render less convenient the access to any sewer.

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

24. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Council and the undertaker in respect of any sewer or other apparatus constructed, laid or erected in land belonging to the Council before the coming into force of this Order.

25. Any difference arising between the Council and the undertaker under this Part of this Schedule shall be referred to and settled by arbitration under article 54 (arbitration).

PART 4

PROTECTION FOR ENVIRONMENT AGENCY

26.—(1) For the protection of the Environment Agency (in this Part of this Schedule referred to as “the Agency”) the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the Agency, have effect.

(2) Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991 or any byelaws

made under that Act or the Land Drainage Act 1991(32) in relation to anything done under or in pursuance of this Order.

(3) Before carrying out any works under the powers of this Order involving the erection or raising of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991 or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow for any such watercourse in, under or through any land held for the purposes of or in connection with Translink the Council shall furnish to the Agency proper and sufficient plans thereof for the approval of the Agency and shall not carry out the said works until the said plans have been approved in writing by the Agency.

(4) The approval of plans furnished under this paragraph shall not be unreasonably withheld and if, within two months of such plans being supplied to the Agency, the Agency does not indicate in writing its disapproval and the grounds of its disapproval, it shall be deemed to have approved the plans as supplied.

(5) For the purposes of this Part of this Schedule, “plans” includes sections, drawings, specifications, calculations and descriptions.

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

(7) Nothing in this Part of this Schedule shall have the effect of requiring the Council to carry out works of maintenance in respect of any culvert or structure which the Agency or any other person are liable to maintain.

(8) If any obstruction is erected or raised or any culvert is constructed, altered or replaced in contravention of this Part of this Schedule the Council shall upon receiving notice from the Agency take such action as may be necessary to remedy the effect of the contravention to the Agency’s satisfaction and in default the Agency may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the Council as a debt due from them to the Agency.

PART 5

PROTECTION FOR NETWORK RAIL INFRASTRUCTURE LIMITED

27.—(1) For the protection of Network Rail Infrastructure Limited, the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and Network Rail Infrastructure Limited, have effect.

(2) In this Part of this Schedule—

“authorised railways” means the railways of Network Rail Infrastructure between Luton station and Luton Airport Parkway railway station;

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

“the engineer” means an engineer appointed by Network Rail Infrastructure Limited for the purposes of this Order;

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“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail (then called Railtrack PLC) by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993⁽³³⁾;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985⁽³⁴⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited and directly related to any such railway; and
- (b) any easement or other property interest held by or for the benefit of Network Rail and directly related to any such railway;

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail railway network as a result of the construction or failure of a specified work or any such act or omission as mentioned in paragraph 38;

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

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

28.—(1) Subject to paragraph (4), the Council shall not pursuant to the powers of this Order, without the consent of Network Rail Infrastructure Limited acquire or enter upon, take or use, whether temporarily or permanently or acquire any new rights over any railway property.

(2) The Council shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 10 (provisions relating to statutory undertakers etc) , in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail Infrastructure Limited.

(3) Where Network Rail Infrastructure Limited is asked to give its consent pursuant to subparagraph (1) and (2), such consent shall—

- (a) not be unreasonably withheld or delayed but may be given subject to reasonable conditions for the safe operation and maintenance of the authorised railways which do not interfere with the construction or maintenance of the specified works; and
- (b) be subject to compliance by Network Rail Infrastructure Limited with any relevant railway operational procedures.

⁽³³⁾ 1993 c. 43.

⁽³⁴⁾ 1985 c. 6.

Nothing in this Order shall prevent the Council pursuant to article 19 (power to acquire land) from acquiring the interest of any person other than Network Rail Infrastructure Limited in railway property.

29.—(1) The Council shall before commencing construction of any specified work supply to Network Rail Infrastructure Limited proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be constructed except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail Infrastructure Limited the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail Infrastructure Limited, Network Rail Infrastructure Limited gives notice to the Council that Network Rail Infrastructure Limited desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the authorised railways then, if the Council desires such part of the specified work to be constructed, Network Rail Infrastructure Limited shall construct it (together with any adjoining part of the specified work which the Council reasonably requires to be constructed in one operation with that work) with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of the Council.

(4) In the event of Network Rail Infrastructure Limited not constructing or completing any part of a specified work pursuant to sub-paragraph (3) with all reasonable dispatch and to the reasonable satisfaction of the Council in accordance with such programme as may be agreed with the Council or settled by arbitration, Network Rail Infrastructure Limited shall pay compensation to the Council for any loss which it may sustain as a result.

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

30.—(1) Any specified work shall, when commenced, be constructed—

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

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

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

31.—(1) The Council shall—

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

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

33.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of a specified work, or during a period of 12 months after the commencement of regular revenue-earning train operations using the new railways comprised in any specified work, in consequence of the construction of a specified work, and Network Rail Infrastructure Limited gives to the Council reasonable notice of its intention specifying the alterations or additions to be carried out, the Council shall pay to Network Rail Infrastructure Limited the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail Infrastructure Limited in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 34, provide such details of the formula by which those sums have been calculated as the Council may reasonably require.

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

34. The Council shall repay to Network Rail Infrastructure Limited all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail Infrastructure Limited—

- (a) in constructing any part of a specified work on behalf of the Council as provided by paragraph 29(3) or in constructing any protective works under the provisions of paragraph 29(5) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works; and
- (b) in respect of the approval by the engineer of plans submitted by the Council and the supervision by him of the construction of a specified work.

35.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised works where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 29(1) for the relevant part of the authorised works giving rise to EMI (unless the Council has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the Council shall in the design and construction of the authorised works take all measures necessary to prevent EMI and shall establish with Network Rail Infrastructure Limited (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Council’s compliance with sub-paragraph (3)—

- (a) the Council shall consult with Network Rail Infrastructure Limited as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail Infrastructure Limited (both before and after formal submission of plans under paragraph 29(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail Infrastructure Limited shall make available to the Council all information in Network Rail Infrastructure Limited’s possession reasonably requested by the Council in respect of Network Rail’s apparatus identified pursuant to paragraph (a); and
- (c) Network Rail Infrastructure Limited shall allow the Council reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail Infrastructure Limited shall not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail Infrastructure Limited, and in relation to such modifications paragraph 29(1) shall have effect subject to this paragraph.

(6) If at any time prior to the commencement of regular revenue-earning train operations on the new authorised busway comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the Council shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the Council’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in subparagraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the Council shall afford reasonable facilities to Network Rail Infrastructure Limited for access to the Council’s apparatus in the investigation of such EMI;
- (b) Network Rail Infrastructure Limited shall afford reasonable facilities to the Council for access to Network Rail’s apparatus in the investigation of such EMI; and
- (c) Network Rail Infrastructure Limited shall make available to the Council any additional material information in its possession reasonably requested by the Council in respect of Network Rail’s apparatus or such EMI.

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(8) Where Network Rail Infrastructure Limited approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail Infrastructure Limited shall allow the Council reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the Council in accordance with paragraph 30.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 38(1) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which paragraph (6) applies.

(10) For the purpose of paragraph 34(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 54 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

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

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

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

39.—(1) The Council shall pay to Network Rail Infrastructure Limited all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail Infrastructure Limited—

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

and the Council shall indemnify Network Rail Infrastructure Limited from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail Infrastructure Limited on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail Infrastructure Limited or of any person in its employ or of its contractors or agents) excuse the Council from any liability under the provisions of this sub-paragraph.

(2) Network Rail Infrastructure Limited shall give the Council reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Council.

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

(4) Subject to the terms of any agreement between Network Rail Infrastructure Limited and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail Infrastructure Limited shall promptly pay to each train operator the amount of any sums which Network Rail Infrastructure Limited receives under subparagraph (3) which relates to the relevant costs of that train operator.

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

40. Network Rail Infrastructure Limited shall, on receipt of a request from the Council, from time to time provide the Council free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Council is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 38 and with such information as may reasonably enable the Council to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs)).

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

42. The Council and Network Rail Infrastructure Limited may enter into, and carry into effect, agreements for the transfer to the Council of—

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

43. In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail, shall—

- (a) co-operate with the Council with a view to avoiding delay and securing conformity as between any plans approved by the engineer and any requirements resulting from those procedures; and
- (b) use best endeavours to avoid any conflict arising between the application of railway operational procedures and the proper implementation of the authorised works pursuant to this Order.

PART 6

PROTECTION FOR HIGHWAY AUTHORITIES

44.—(1) For the protection of the highway authorities concerned, the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the highway authority concerned, have effect.

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

(2) In this Part of this Schedule—

“highway” means a street vested in or maintainable by the highway authority;

“highway operations” means the construction of any part of the authorised works which will involve interference with a highway or the traffic in a highway and any temporary stopping up, alteration or diversion of a highway;

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

(3) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent shall be in writing and may be given subject to such reasonable terms and conditions as the highway authority may require in the interests of safety and in order to minimise inconvenience to persons using the highway, but shall not be unreasonably withheld.

(4) Prior to seeking approval under sub-paragraph (5), the Council shall consult the highway authority concerned as to any works to and changes in the management of the highway network which may be required to ensure the effective integration of the authorised busway with other forms of highway traffic and, within 28 days of being requested in writing by the Council so to do, the highway authority shall provide the Council with its opinion on the subject.

(5) Without prejudice to the application of sections 59 and 60 of the 1991 Act (duty of street authority to co-ordinate and undertakers to co-operate) before commencing any highway operations, the Council shall submit to the highway authority for its approval proper and sufficient plans and shall not commence the highway operations until such plans have been approved or settled by arbitration.

(6) If, within 56 days after any plans have been submitted to a highway authority under sub-paragraph (5), it has not intimated its disapproval and the grounds of disapproval, it shall be deemed to have approved them.

(7) In the event of any disapproval of plans by a highway authority under sub-paragraph (6), the Council may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it shall be deemed to have approved them.

(8) In submitting plans under sub-paragraph (5), the Council shall—

(a) ensure that the design of any lighting for new station areas is such as not to cause confusion to highway users operating under normal highway lighting;

(b) ensure that the design and positioning of any poles and brackets required for overhead line equipment and the design of foundations, platforms, road islands, substations, electric lines and other apparatus are compatible, so far as reasonably practicable, with street furniture vested in the highway authority; and

(c) ensure that the design of any traffic signaling system for the authorised busway is fully compatible with traffic signaling for other traffic users whilst achieving priority signaling for guided buses using the authorised busway wherever practicable.

(9) Except in an emergency or where reasonably necessary to secure the safety of the public no direction or instruction shall be given by the highway authority to the contractors, servants or agents of the Council regarding the highway operations without the prior consent in writing of the Council.

(10) The highway authority shall not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions pursuant to this Part of this Schedule.

(11) To facilitate liaison with the Council, the highway authority concerned shall provide so far as is reasonably practicable a representative to attend meetings arranged by the Council respecting highway operations.

(12) So much of the authorised works as forms part of or is intended to become public highway, or part of any such highway, and which are not street works as respects which the provisions of Part 3 of the 1991 Act apply, shall be completed in accordance with the reasonable requirements of the highway authority or, in case of differences between the Council and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration.

(13) The Council shall not, except with the consent of the highway authority, alter or interfere with any sanitary convenience, refuge, sewer, drain, lamp column, traffic sign, bollard, bin for refuse or road materials or apparatus connected therewith, or any other property or work belonging to, or under the jurisdiction or control of, the highway authority on or under any highway or repairable by them or the access thereto.

(14) The Council shall not, except with the consent of the highway authority, deposit any soil or materials or stand any vehicle or plant on or over any highway so as to obstruct or render less safe the use of the highway by any person or, except with the like consent, deposit any soil or materials on any highway except within a hoarding.

(15) The Council shall, if reasonably so required by the highway authority, provide and maintain during such time as the Council may occupy any part of a highway for the purpose of the construction of any part of the authorised works, temporary ramps for vehicular traffic or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with the standard recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs Regulations and General Directions 1994(35) in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

(16) The Council shall not place any hoardings on any part of any highway except for such period and in such manner as may be reasonably necessary.

(17) The Council shall indemnify the highway authority against any claim which may arise as a result of any subsidence of, or damage to, any highway or any sanitary convenience, refuge, sewer, drain, lamp column, traffic sign, bollard, bin for refuse or road materials or apparatus connected therewith or any other property or work belonging to, or under the jurisdiction or control of, the highway authority on or under any highway, or maintainable by them, which may be caused by, or in consequence of, any act or default of the Council, its contractors, servants or agents.

(18) Unless otherwise agreed between the parties any difference arising between the Council and the highway authority under this Part of this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration.

PART 7

FOR PROTECTION OF CERTAIN LAND NEAR JEANS WAY, LUTON

45.—(1) For the protection of certain land off Jeans Way, Luton the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the authorities concerned, have effect.

(2) In this Part of this Schedule—

“local authority”, “parish council” and “designated land” have the same meanings as in article 19 (power to acquire land).

(3) The Council may enter into agreements with a local authority or a parish council for the carrying out by the Council and subsequent maintenance of any landscaping and ecological mitigation works to be undertaken on designated land.

(35) [S.I. 1994/1519](#).

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Luton Borough Council to construct works and compulsorily to acquire land and rights in land for the purposes of a guided busway system between Dunstable and Luton Airport in the County of Bedfordshire. The Order includes powers for the operation and regulation of the guided busway and for traffic regulations and improvements on connecting roads.

Copies of the plans, sections and the book of reference mentioned in the Order are available for inspection free of charge during normal working hours at—

- (a) the offices of Luton Borough Council at the Town Hall, Luton LU1 2BQ; and
- (b) the offices of Bedfordshire County Council, County Hall, Cauldwell Street, Bedford, Bedfordshire MK42 9AP.