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STATUTORY INSTRUMENTS

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**2009 No. 1300**

**The Nottingham Express Transit System Order 2009**

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1. This Order may be cited as the Nottingham Express Transit System Order 2009 and shall come into force on 9th June 2009.

**Interpretation**

2.—(1) In this Order—

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

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

“the 1980 Act” means the Highways Act 1980(3);

“the 1984 Act” means the Road Traffic Regulation Act 1984(4);

“the 1990 Act” means the Town and Country Planning Act 1990(5);

“the 1991 Act” means the New Roads and Street Works Act 1991(6);

“the 1994 Act” means the Greater Nottingham Light Rapid Transit Act 1994(7);

“address” includes any number or address used for the purposes of electronic transmission;

“the authorised street tramway” means any street tramway authorised by this Order;

“the authorised tramroad” means any tramroad authorised by this Order;

“the authorised tramway” means the tramway (consisting of the authorised street tramway and the authorised tramroad) authorised by this Order, or any part of that tramway;

“the authorised works” means the scheduled works and any other works authorised by this Order, or any part of them;

“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;

“building” includes any structure or erection, or any part of a building, structure or erection;

“the canal” means the Nottingham Beeston Canal;

“carriageway” has the same meaning as in the 1980 Act;

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(1) 1961 c. 33.

(2) 1965 c. 56.

(3) 1980 c. 66.

(4) 1984 c. 27.

(5) 1990 c. 8.

(6) 1991 c. 22. As amended by the Traffic Management Act 2004 c. 18.

(7) 1994 c. xv.

- “the City” means the City of Nottingham;
- “the City Council” means Nottingham City Council;
- “the County Council” means The Nottinghamshire County Council;
- “cycle track” has the same meaning as in the 1980 Act;
- “electric line” has the meaning given by section 64(1) of the Electricity Act 1989<sup>(8)</sup>;
- “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or
  - (b) by other means but while in electronic form;
- “footway” has the same meaning as in the 1980 Act;
- “highway” and “highway authority” have the same meaning as in the 1980 Act;
- “the limits of deviation” means the limits of lateral deviation for the scheduled works mentioned in article 6(1)(a) and (2) (power to deviate);
- “Line One” means the light rail transit system authorised by the 1994 Act, comprising railways and tramways and all works and conveniences provided in connection with those railways and tramways, as that system is constructed, extended or altered from time to time;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;
- “the Nottingham Inclosure Act” means the Act of Parliament whose long title is “An Act for inclosing Lands in the Parish of Saint Mary in the Town and County of the Town of Nottingham”<sup>(9)</sup>;
- “the open space and exchange land plans” means the plans that are each headed “open space and exchange land plan”, which are attached to the works and land plans and which are certified by the Secretary of State as the open space and exchange land plans for the purposes of this Order;
- “the Order limits” means the permanent limits and the temporary limits;
- “owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981<sup>(10)</sup>;
- “parking place” has the same meaning as in section 32 of the 1984 Act;
- “the permanent limits” means the limits of deviation and of land to be acquired or used and the limits of additional land to be acquired or used, as shown on the works and land plans, described in the book of reference and (in the case of the additional land) specified in columns (1) and (2) of Schedule 2 (additional land which may be acquired or used);
- “the promoter” means the County Council and the City Council, or either of them;
- “the relevant part of the canal” means so much of the canal as is within the Order limits relating to Work No.7, or any part of it;
- “the relevant part of the river” means so much of the River Trent as is within the Order limits relating to Work No.12, or any part of it;
- “the scheduled works” means the works specified in Schedule 1 (scheduled works), or any part of them;
- “the sections” means the sections included in the works and land plans;
- “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;

<sup>(8)</sup> 1989 c. 29.<sup>(9)</sup> 8 & 9 Vict. c. 7.<sup>(10)</sup> 1981 c. 67.

“street tramway” means any part of a tramway which is laid along a street, whether or not the section of the street in which its rails are laid may be used by other traffic;

“the temporary limits” means the limits of land to be used temporarily as shown on the works and land plans, described in the book of reference and specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken);

“the traffic regulation and rights of way plans” means the plans certified by the Secretary of State as the traffic regulation and rights of way plans for the purposes of this Order;

“tramcar” means any vehicle (whether or not used for the carriage of passengers) carried on flanged wheels along the rails of a tramway;

“tramroad” means any part of a tramway which is not a street tramway;

“tram services” means passenger services utilising the authorised tramway;

“tramway” means a system of transport used wholly or mainly for the carriage of passengers and employing parallel rails which—

- (a) provide support and guidance for vehicles carried on flanged wheels; and
- (b) are laid wholly or mainly along a street or in any other place to which the public has access (including a place to which the public has access only on making a payment);

“tramway premises” means any premises of the promoter used for or in connection with the operation or maintenance of the authorised tramway, including any depot, test track, building, park & ride site and any tramcar;

“the tribunal” means the Lands Tribunal;

“watercourse” includes all docks, rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer or drain; and

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

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

(3) 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.

(4) References in this Order to points identified by letters, with or without numbers, or by numbers, shall be construed as references to the points so marked on the works and land plans or, in the case of Schedule 10 (traffic regulation), to the points so marked on the traffic regulation and rights of way plans.

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

### **Application of enactments relating to railways**

3.—(1) The provisions of the Regulation of Railways Acts 1840 to 1893 shall not apply in relation to the authorised tramway.

(2) The provisions of the Highway (Railway Crossings) Act 1839<sup>(11)</sup> shall not apply in relation to the authorised tramway.

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(11) 1839 c. 45.

(3) Sections 32 to 34 of the Offences Against the Person Act 1861(12) shall apply in relation to the authorised tramway as if the word “tramway” were substituted for “railway” throughout those sections.

### **Application of 1991 Act**

4.—(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 (street works in England and Wales) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings over footways and verges).

(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 transport works by virtue of paragraph (1), be construed as references to the promoter.

(3) The following provisions of the 1991 Act shall not apply in relation to any works executed under the powers of this Order—

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial streetworks);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the promoter under the powers conferred by article 12 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

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

- section 54 (advance notice of certain works), subject to paragraph (6);
- section 55 (notice of starting date of works), subject to paragraph (6);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);

section 75 (inspection fees);  
section 76 (liability for cost of temporary traffic regulation); and  
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.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) shall have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 14 (construction and maintenance of new, altered or diverted streets) shall—

- (a) affect the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the promoter shall not by reason of any duty under that article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

(8) To such extent as is reasonably necessary for protecting the authorised street tramways and their operation and use the promoter shall have the same powers as respects reinstatement as a street authority has under section 72 of the 1991 Act.

(9) In its application to the authorised tramway section 93(3) of the 1991 Act shall also permit the promoter to make reasonable requirements—

- (a) for allowing it facilities to monitor the execution of the works; and
- (b) for the protection of the authorised tramway.

## PART 2 WORKS PROVISIONS

### *Principal powers*

#### **Power to construct and maintain works**

5.—(1) The promoter may construct and maintain the scheduled works.

(2) Subject to article 6 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (7), the promoter may 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) stations, depots, platforms, junctions and stopping places;
- (b) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised tramway;
- (c) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (d) works for the strengthening, alteration or demolition of any building;
- (e) works to alter the position of any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;

- (f) works to alter the course of, or otherwise interfere with, watercourses;
  - (g) landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works; and
  - (h) facilities and works for the benefit or protection of land or premises affected by the other authorised works.
- (4) Subject to paragraph (7), the promoter may 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) The promoter may remove any works constructed by it pursuant to this Order which have been constructed as temporary works or which it no longer requires.
- (6) Where the promoter lays down conduits for the accommodation of cables or other apparatus for the purposes of or associated with the authorised works it may provide in, or in connection with, such conduits, accommodation for the apparatus of any other person, and manholes and other facilities for access to such accommodation, and may permit the use of such conduits and facilities on such terms and conditions as may be agreed between it and such other person.
- (7) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works—
- (a) within the Order limits; or
  - (b) within the boundaries of any street along which the construction of a street tramway is shown on the works and land plans, or which has a junction with such a street.
- (8) The powers of this article shall not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street along which the construction of a street tramway is shown on the works and land plans without the consent of the street authority but such consent shall not be unreasonably withheld.
- (9) Section 109 of the Water Resources Act 1991<sup>(13)</sup>, section 23 of the Land Drainage Act 1991<sup>(14)</sup> and any byelaws made under those Acts shall not apply to anything done under or in pursuance of this Order.
- (10) Section 6 of the Ecclesiastical Jurisdiction Measure 1963<sup>(15)</sup>, section 7 of the Faculty Jurisdiction Measure 1964<sup>(16)</sup> and Part 3 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991<sup>(17)</sup> shall not apply to anything done under or in pursuance of this Order in relation to Work No.16A and the land numbered 1169 on the works and land plans.
- (11) The scheduled works may be constructed and maintained under the powers of this article regardless of anything contained in or done pursuant to section 53 of the Nottingham Inclosure Act or Part 1 of, or Schedule 2 to, the Commons Act 2006<sup>(18)</sup>.

### **Power to deviate**

- 6.—(1) In constructing or maintaining any of the scheduled works, the promoter may—
- (a) deviate laterally from the lines or situations shown on the works and land plans within the Order limits relating to that work shown on those plans; and
  - (b) deviate vertically from the levels shown on the sections—
    - (i) to any extent not exceeding 3 metres upwards; and
    - (ii) to any extent downwards as may be necessary or expedient.

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<sup>(13)</sup> 1991 c. 57.

<sup>(14)</sup> 1991 c. 59.

<sup>(15)</sup> 1963 No.1.

<sup>(16)</sup> 1964 No.5.

<sup>(17)</sup> 1991 No.1.

<sup>(18)</sup> 2006 c. 26.

(2) In constructing or maintaining any work or part of a work shown on the works and land plans as being situated in a street and for which no limits of deviation are shown on those plans, the promoter may deviate laterally within the boundaries of that street.

(3) The promoter may, in constructing or maintaining the authorised tramway, lay down—

- (a) double lines of rails in place of single lines;
- (b) single lines of rails in place of double lines;
- (c) interlacing lines of rails in place of double or single lines; or
- (d) double or single lines of rails in place of interlacing lines.

(4) The power in paragraph (3) shall not be exercised in the case of the authorised street tramway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The promoter may in constructing or maintaining the authorised street tramway lay down such number of switches and crossings as may be necessary or expedient.

(6) The promoter may in constructing and maintaining the authorised tramroad provide within the limits of deviation for the tramroad such number of lines of rails and sidings, switchings and crossings as may be necessary or expedient.

(7) Without limiting the scope of paragraph (1)—

- (a) in constructing and maintaining Works Nos. 3, 5, 6, 6A, 10, 10A, 10B, 12, 15 and 15A the promoter may, to the extent it thinks fit, deviate from the design of the bridges shown on the sections, including by varying the number of any supporting columns or other structures, the distances between them and the height or clearance above the level of any land underneath the bridges; and
- (b) in constructing and maintaining the scheduled works the promoter may, to the extent it thinks fit, deviate laterally from their points of commencement and termination shown on the works and land plans.

### **Designation of works**

7.—(1) Regardless of anything in the description of the scheduled works contained in Schedule 1 (scheduled works)—

- (a) the whole or any part of the authorised street tramway may be constructed within the limits of deviation for that work off-street as a tramroad, and so far as it is so constructed shall be treated for the purposes of this Order as if it were so designated; and
- (b) the whole or any part of the authorised tramroad may be constructed within the limits of deviation for that work along a street as a street tramway, and so far as it is constructed shall be treated for the purposes of this Order as if it were so designated.

(2) Where, by means of the creation or extinguishment of rights of way, any part of the authorised tramway which has been constructed as a tramroad becomes a street tramway, or any part which was constructed as a street tramway becomes a tramroad, it shall be treated for the purposes of this Order as if it were so designated.

### *Streets*

### **Power to alter layout, etc., of streets**

8.—(1) The promoter may alter the layout of, and carry out other ancillary works in any street specified in column (1) of Part 1 or Part 2 of Schedule 3 (streets subject to alteration of layout) in the manner specified in relation to that street in column (2) of Part 1 or Part 2 of that Schedule.

(2) Without limiting the scope of the specific powers conferred by article 5 (power to construct and maintain works) or paragraph (1) but subject to paragraph (3) the promoter may, for the purpose of constructing, maintaining or using any authorised street tramway, alter the layout of the street along which the authorised street tramway is or is to be laid and the layout of any street having a junction with such a street; and, without limiting the scope of that power, the promoter may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, 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 tramcars or by carrying out other works for that purpose;
- (d) carry out works for the provision or alteration of parking places, loading bays, bus stop clearways, cycle tracks and bus laybys;
- (e) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999<sup>(19)</sup> and which are carried out in compliance with those Regulations;
- (f) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the authorised street tramway; and
- (g) 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**

9.—(1) The promoter may, for the purposes of or in connection with the construction, maintenance and use of the authorised tramway, place and maintain in any street in which the tramway is or is to be laid or in any street having a junction with such a street any work, equipment or apparatus including, without limiting the scope of that power, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

(2) The powers of this article shall not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street along which the construction of a street tramway is shown on the works and land plans without the consent of the street authority, but such consent shall not be unreasonably withheld.

(3) 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, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

#### **Power to execute street works**

10.—(1) The promoter may, for the purpose of exercising the powers conferred by article 9 (power to keep apparatus in streets) or any other provision of this Order, enter upon any street in which the authorised tramway is or is to be laid and any street having a junction with such a street and may execute any works required for or incidental to the exercise of those powers including, without limiting the scope of that power, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

<sup>(19)</sup> S.I. 1999/1026.

(2) The powers of this article shall not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street along which the construction of a street tramway is shown on the works and land plans without the consent of the street authority, but such consent shall not be unreasonably withheld.

### **Stopping up of streets and extinguishment of rights**

**11.**—(1) Subject to the provisions of this article, the promoter may, in connection with the construction of the authorised works, stop up each of the streets specified in column (1) of Schedule 4 (streets to be permanently stopped up) to the extent specified, by reference to the letters and numbers shown on the works and land plans or the traffic regulation and rights of way plans, in column (2) of that Schedule.

(2) No street specified in column (1) of Part 1 or Part 2 of Schedule 4 (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 either—

- (a) the new street to be substituted for it, and which is specified in relation to it by reference to one of the scheduled works or other works in column (3) of those Parts 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 for the passage of such traffic as is reasonably likely to have used the street to be stopped up is first provided and thereafter maintained by the promoter, to the reasonable satisfaction of the street authority, between the commencement and termination points of the street to be stopped up, until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in column (1) of Part 3 or Part 4 of Schedule 4 (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 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 promoter 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 stopped up under this article—

- (a) all rights of way over or along it shall be extinguished; and
- (b) the promoter may appropriate and use for the purposes of its tramway undertaking so much of the site of the street as is bounded on both sides by land owned or appropriated by the promoter.

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

(7) This article is subject to paragraph 2 of Schedule 11 (provisions relating to statutory undertakers, etc.).

### **Temporary stopping up of streets**

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

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

(2) Without limiting the scope of paragraph (1), the promoter may use any street stopped up under the powers of this article as a temporary working site.

(3) The promoter shall provide at all times 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.

(4) Without limiting the scope of paragraph (1), the promoter may exercise the powers of this article in relation to the streets specified in column (1) of Schedule 4 (streets to be permanently stopped up) to the extent specified, by reference to the letters and numbers shown on the works and land plans or the traffic regulation and rights of way plans and set out in column (2) of that Schedule, and in relation to the streets specified in Schedule 5 (streets to be temporarily stopped up).

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

- (a) in relation to any street specified as mentioned in paragraph (4), without first consulting the street authority; and
- (b) in relation to any other street, without the consent of the street authority which may attach reasonable conditions to any consent, but such consent shall not be unreasonably withheld.

(6) 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**

**13.** The promoter may, for the purposes of the construction, operation or maintenance of the authorised works, form and lay out such means of access, or improve such existing means of access, at such locations within the Order limits as the promoter reasonably requires for the purposes of the authorised works, as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

### **Construction and maintenance of new, altered or diverted streets**

**14.**—(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 between the promoter and the highway authority, be maintained by and at the expense of the promoter for a period of 12 months from its completion and after 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 promoter for a period of 12 months from its completion and after 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 a tramroad or carrying a tramroad over a street and except as provided in those paragraphs the promoter shall not be liable to maintain the surface of any street in, on, under or over which the scheduled works shall be constructed, or the immediate approaches to any such street, unless otherwise agreed with the street authority.

(4) In any action against the promoter in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that the promoter had taken

such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court shall in particular have regard to the following matters—

- (a) the character of the street including its use for a tramway, and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the promoter knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the promoter could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the promoter had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the promoter had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

### **Construction of bridges and tunnels**

**15.** Any bridge or tunnel to be constructed under this Order for carrying a highway over or under the authorised tramroad shall be constructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

### **Restoration of streets if street tramway discontinued**

**16.** If the promoter abandons the construction of, or permanently ceases to operate any of, the authorised street tramways (“the discontinued tramway”), it shall as soon as reasonably practicable and unless otherwise agreed with the street authority—

- (a) remove from any street in which the discontinued tramway is laid the rails and any other works, equipment and apparatus which have become redundant; and
- (b) restore, to the reasonable satisfaction of the street authority, the portion of the street along which the discontinued tramway was laid, or redundant works, equipment and apparatus were laid, regard being had to—
  - (i) the condition of the street before the tramway was laid; and
  - (ii) the nature of the traffic using the street at the time of the discontinuance.

### **Agreements with street authorities**

**17.—(1)** A street authority and the promoter may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under the authorised tramroad) under the powers conferred by this Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of any street along or across which a street tramway is laid, or of the structure of any bridge or tunnel carrying a street over or under the authorised street tramway or the authorised tramroad;

- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
  - (e) the execution in the street of any of the works referred to in article 10 (power to execute street works).
- (2) Such an agreement may, without limiting the scope of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question; and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### **New road crossings**

**18.**—(1) Where by virtue of the creation of a highway or other road after the day on which application was made for this Order under section 6 of the Transport and Works Act 1992<sup>(20)</sup>, the authorised tramroad would cross that highway or road, then the promoter may construct the tramroad so as to carry it on the level across the highway or road.

(2) The promoter may provide, maintain and operate at or near any new road crossing such protective equipment as the Office of Rail Regulation may in writing approve.

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

(4) Without limiting the scope of article 8 (power to alter layout, etc., of streets), the promoter may in the exercise of the powers conferred by this article alter the level of any highway or road referred to in paragraph (1).

(5) The highway authority may enter into agreements with the promoter with respect to the construction and maintenance of any new road crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(6) In this article—

“new road crossing” means the place at which the authorised tramroad crosses a highway or other road on the level under the powers conferred by this article; and

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

### *Supplemental powers*

### **Attachment of equipment to buildings**

**19.** The promoter may affix to any building for the time being constructed on any land at the NG<sup>2</sup>; Development Site Spine Road specified in Schedule 6 (land not to be acquired compulsorily), or on any land specified in Schedule 8 (acquisition of new rights only)—

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

<sup>(20)</sup> 1992 c. 42. As amended by S.I. 1995/1541, 1998/2226, 2003/3199 and 2006/958.

### **Temporary closure of, and works in, waterways**

**20.**—(1) The promoter may, in connection with the construction of Work No.7 or Work No.12—

- (a) temporarily interfere with the relevant part of the canal or, as the case may be, the relevant part of the river by constructing or maintaining caissons, cofferdams or other temporary works at any point within that part of the canal or river as the promoter considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in the relevant part of the canal or, as the case may be, the relevant part of the river, and may load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials in connection with the construction of Work No.7 or Work No.12;
- (c) on grounds of health and safety only, temporarily close to navigation the relevant part of the canal or, as the case may be, the relevant part of the river; and
- (d) temporarily remove the water from the relevant part of the canal or, as the case may be, the relevant part of the river that is so interfered with or closed.

(2) During the period of any closure referred to in paragraph (1)(c), all rights of navigation and other rights relating to, and any obligations of the British Waterways Board to manage, the relevant part of the river or the relevant part of the canal so closed shall be suspended and unenforceable against the British Waterways Board.

(3) The power conferred by paragraph (1) shall be exercised in a way which secures—

- (a) that no more of the relevant part of the river or the relevant part of the canal is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure to navigation of the relevant part of the river or the relevant part of the canal becomes necessary, all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

(4) In exercising the powers conferred by paragraph (1) in relation to the relevant part of the canal the promoter shall—

- (a) take such reasonable steps as are necessary to ensure that—
    - (i) the flow of water in the canal is maintained unaltered; and
    - (ii) the functioning of any intake or discharge along the canal is unaffected; and
  - (b) without affecting sub-paragraph (a), keep any interference with water levels or flows to the minimum reasonably necessary to construct the works.
- (5) Any person who suffers loss or damage as the result of—
- (a) the suspension of any private right of navigation under this article; or
  - (b) any effect of the exercise of the powers conferred by paragraph (1) on the functioning of any intake or discharge along the canal,

shall be entitled to be paid compensation for such loss or damage by the promoter, to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Discharge of water**

**21.**—(1) The promoter may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation 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, or in any street along which the authorised street tramway is authorised to be laid, make openings into, and connections with, the watercourse, sewer or drain.

(2) Any dispute arising from the exercise of the power under paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(21)</sup>.

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

(4) The promoter shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The promoter 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.

(6) The promoter 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, oil or matter in suspension.

(7) 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<sup>(22)</sup>.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority or a harbour authority within the meaning of the Harbours Act 1964<sup>(23)</sup>; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

### **Safeguarding works to buildings**

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

(2) Safeguarding works may be carried out—

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

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

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

- (a) enter the building and any land within its curtilage; and

<sup>(21)</sup> 1991 c. 56.

<sup>(22)</sup> 1991 c. 57.

<sup>(23)</sup> 1964 c. 40.

- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out safeguarding works to a building;
- (b) a right under paragraph (3) to enter a building and any land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the promoter shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the safeguarding 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 of whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 82 (arbitration).

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

(8) Where—

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

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

(9) Without affecting article 81 (no double recovery), nothing in this article shall relieve the promoter 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 “safeguarding works”, in relation to a building, means—

- (a) 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;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and
- (c) any works the purpose of which is to secure the safe operation of the authorised tramway or to prevent or minimise the risk of such operation being disrupted.

### **Power to construct temporary street tramway**

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

- (a) remove or discontinue the operation of the authorised street tramway; and

(b) lay, maintain and operate in that street or in a street near to that street a temporary street tramway in place of the authorised street tramway.

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

(3) The provisions of articles 8(2) (power to alter layout, etc., of streets), 9 (power to keep apparatus in streets), 10 (power to execute street works) and 49 (traffic signs) shall apply in relation to temporary street tramways laid under this article as they apply in relation to the authorised street tramway.

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

**24.**—(1) 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).

(2) 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<sup>(24)</sup> (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<sup>(25)</sup>, 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 the 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.

(3) 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<sup>(26)</sup> 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.

### **Power to survey and investigate land, etc.**

**25.**—(1) The promoter may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits, any street along which the authorised street tramway is authorised to be laid and any street having a junction with such a street;
- (b) without limiting the scope of sub-paragraph (a), make trial holes in such positions as the promoter thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limiting the scope of sub-paragraph (a), carry out archaeological investigations on any such land;
- (d) take steps to protect or remove any flora or fauna on the land where the flora or fauna may be affected by the carrying out of the authorised works;
- (e) 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 (d); and
- (f) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (e).

<sup>(24)</sup> S.I. 1969/17.

<sup>(25)</sup> S.I. 1975/148.

<sup>(26)</sup> S.I. 1999/1892.

(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 promoter—

(a) shall, if so required, before or after entering the land produce written evidence of that person's authority to do so; and

(b) may take onto the land 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—

(a) in a carriageway or footway without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(5) The promoter shall pay 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.

(6) Nothing in this article shall remove the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(27).

### **Mode of construction and operation of authorised tramway**

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

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

(3) Where the authorised tramway is constructed along a street or in any place to which the public has access (including any place to which the public has access only on making a payment), the promoter shall take such care as in all the circumstances is reasonable to ensure that the authorised tramway is constructed and maintained so that the street or other place is safe for other users.

(4) When considering what measures are required under paragraph (3) the promoter shall have particular regard to the character and usage of the street or other place and to those who could reasonably be expected to use it.

(5) Where the authorised street tramway has been constructed in a street, works by any person which affect or are likely to affect the promoter's obligations under paragraph (3), including works to any street surfaces and works affecting any equipment or apparatus placed in the street under article 9 (power to keep apparatus in streets), shall not be carried out without the consent of the promoter, which may be given subject to such reasonable terms and conditions as the promoter may impose but shall not be unreasonably withheld.

### **Obstruction of construction of authorised works**

**27.** Any person who, without reasonable excuse—

(a) obstructs another person acting under the authority of the promoter in setting out the lines of the scheduled works, or in constructing any of the authorised works; or

(b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the promoter,

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

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(27) 1979 c. 46.

### **Removal of human remains**

**28.**—(1) In this article “the specified land” means the land at Styring Street, Chilwell Road and Gregory Street numbered 262, 263, 278, 283, 297, 301, 657, 661, 662, 663, 664 and 665 on the works and land plans.

(2) Before the promoter begins to use any part of the specified land for the construction of any of the authorised works in the specified land, the promoter shall remove, or cause to be removed, from that part of the specified land, all human remains in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the promoter shall give notice of such intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing it once in each of two successive weeks in a newspaper circulating in the County of Nottinghamshire; and
- (b) displaying it in a conspicuous place upon or near to the specified land.

(4) As soon as reasonably possible after the first publication of a notice under paragraph (3) the promoter shall send a copy of the notice to Nottinghamshire Archives, County House, Castle Meadow Road, Nottingham NG2 1AG.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the promoter of that person’s intention to undertake the removal of such remains, and on the giving of such notice, if such remains can be identified, that person shall be at liberty to cause such remains to be removed and reinterred in any burial ground or cemetery in which burials may legally take place, or to be removed to, and cremated in, any crematorium, and as soon as reasonably possible after such reinterment or cremation shall provide to the promoter a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the promoter is not satisfied that any person giving such notice is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by the county court, and the court shall have power to make an order specifying who shall remove the remains and as to the payment of the costs of the application.

(7) The promoter shall pay the reasonable expenses of the removal and reinterment or cremation of such remains.

(8) If—

- (a) within the said period of 56 days no notice under paragraph (5) has been given to the promoter in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days thereafter; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the promoter, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the promoter shall remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the promoter thinks suitable for the purpose and so far as possible remains from individual graves shall be reinterred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the promoter is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, and that the remains in question can be identified, but the person does not remove the remains, the promoter shall comply with any reasonable request that person may make in relation to the removal and reinterment or cremation of the remains.

(10) Upon the reinterment or cremation of any remains under this article—

(a) a certificate of reinterment or cremation shall be sent to the Registrar General by the promoter giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and

(b) a copy of the certificate of reinterment or cremation and the record mentioned in paragraph (8) shall be sent by the promoter to the address mentioned in paragraph (4).

(11) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or power conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(28) shall not apply to a removal carried out in accordance with this article.

## PART 3

### ACQUISITION AND POSSESSION OF LAND

#### *Powers of acquisition*

#### **Power to acquire land**

**29.**—(1) The promoter may acquire compulsorily so much of the land shown on the works and land plans as lying within the permanent limits as may be required for or in connection with the authorised works and may use any land so acquired for those purposes or for any other purpose ancillary to its tramway undertaking.

(2) Nothing in paragraph (1) shall authorise the promoter to acquire compulsorily any of the lands mentioned in Schedule 6 (land not to be acquired compulsorily), or any rights over those lands, but the promoter may acquire by agreement any part of those lands, or any rights over them, and use them, for the purposes referred to in that paragraph.

(3) This article is subject to article 34 (new rights only to be acquired in certain lands).

#### **Application of Part 1 of the Compulsory Purchase Act 1965**

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

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(29) applies; and

(b) as if this Order were a compulsory purchase order under that Act.

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(28) 1857 c. 81.

(29) 1981 c. 67.

(2) Part 1 of the 1965 Act, as so applied, shall have effect as if 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.

### **Application of Compulsory Purchase (Vesting Declarations) Act 1981**

**31.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(30) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, 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 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in 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) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) that person 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 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 30 (application of Part 1 of the Compulsory Purchase Act 1965).

### **Power to acquire new rights**

**32.**—(1) The promoter may compulsorily acquire such easements or other rights over any land within the permanent limits as may be required for any purpose for which that land may be acquired, 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)), where the promoter acquires a right over land under paragraph (1) the promoter shall not be required to acquire a greater interest in that land.

(3) Schedule 7 shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition

under this article or article 34 (new rights only to be acquired in certain lands) of a right over land by the creation of a new right.

### **Power to acquire subsoil only**

**33.**—(1) The promoter may compulsorily acquire so much of, or such rights in, the subsoil of the land within the permanent limits as may be required for any purpose for which that land may be acquired instead of acquiring the whole of the land.

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

(3) Paragraph (2) shall not prevent article 40 (acquisition of part of certain properties) from applying where the promoter acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **New rights only to be acquired in certain lands**

**34.**—(1) In the case of the land specified in Schedule 8 (acquisition of new rights only) the promoter's powers of compulsory acquisition under article 29 (power to acquire land) shall be limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of exercising the powers of article 19 (attachment of equipment to buildings) and using and maintaining any apparatus affixed in the exercise of those powers.

(2) Where the promoter acquires easements or other new rights in the land specified in Schedule 8, article 32(2) (power to acquire new rights) shall apply as it applies to the acquisition of a new right under that article.

### **Rights under or over streets**

**35.**—(1) The promoter may enter upon and appropriate so much of the surface, subsoil of, or air space over, any street shown on the works and land plans and described in the book of reference as may be required for the purposes of the authorised works and may use the surface, subsoil and air space for those purposes or any other purpose ancillary to its tramway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the promoter 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 promoter 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, the amount of such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting on to 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.

(6) The promoter may exercise the powers of paragraph (1) and appropriate any other land shown on the works and land plans and described in the book of reference as may be required for the

purposes of the authorised works, regardless of anything contained in or done pursuant to section 53 of the Nottingham Inclosure Act or Part 1 of, or Schedule 2 to, the Commons Act 2006(31).

*Temporary possession of land*

**Temporary use of land for construction of works**

**36.**—(1) The promoter may, in connection with the carrying out of the authorised works—

(a) enter upon and take temporary possession of—

(i) so much of the land shown on the works and land plans as lying within the temporary limits for the purpose specified in relation to that land in column (3) of Schedule 9 (land of which temporary possession may be taken) relating to the scheduled works (or any of them) specified in column (4) of that Schedule; and

(ii) any of the land within the permanent limits in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;

(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 14 days before exercising the powers conferred by paragraph (1) the promoter shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The promoter may not, without the agreement of the owners of the land, remain in possession of any land of which temporary possession has been taken under this article—

(a) in the case of land within the temporary limits, after the end of the period of 2 years beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 9; or

(b) in the case of land within the permanent limits, after the end of the period of 2 years beginning with the date of completion of the work for which temporary possession of the land was taken unless the promoter has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

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

(5) The promoter 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 affecting article 81 (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) Where the promoter takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(9) 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 30(1) (application of Part 1 of the Compulsory Purchase Act 1965).

### **Temporary use of land for maintenance of works**

**37.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the promoter may—

- (a) enter upon and take temporary possession of any land within the Order limits reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

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

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

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Without affecting article 81 (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 (6).

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

(10) The powers of this article shall not be exercised in relation to any street without the consent of the street authority, which shall not be unreasonably withheld.

(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 30(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(12) In this article “the maintenance period”, in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for public use.

### *Compensation*

### **Disregard of certain interests and improvements**

**38.**—(1) In assessing the compensation (if any) payable to any person on the acquisition from that person of any land or interest in 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 that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

### **Set-off for enhancement in value of retained land**

**39.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal shall set-off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity, which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 32 (power to acquire new rights), the tribunal shall set-off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are acquired; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised works.

(3) The 1961 Act shall have effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

### *Supplementary*

### **Acquisition of part of certain properties**

**40.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 30 (application of Part 1 of the Compulsory Purchase Act 1965)) 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 promoter a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner 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 of whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the promoter agrees to take the land subject to the counter-notice, be referred to the tribunal.

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

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

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the promoter 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 promoter may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, shall pay to the owner compensation for any loss or expense occasioned to the owner 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 promoter shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Extinction or suspension of private rights of way**

**41.—**(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the date of acquisition of the land by the promoter, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the promoter under section 11(1) of the 1965 Act,

whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by the promoter which is within the permanent limits and is required for the purposes of this Order, shall be extinguished on the appropriation of the land for any of those purposes by the promoter.

(3) Subject to the provisions of this article, all private rights of way over land of which the promoter takes temporary possession under this Order shall be suspended and unenforceable for as long as the promoter remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 11 (provisions relating to statutory undertakers, etc.) applies.

(6) Paragraphs (1), (2) and (3) shall have effect subject to—

- (a) any notice given by the promoter before the completion of the acquisition of the land, the promoter's appropriation of it, the promoter's entry onto it or the promoter's taking temporary possession of it, as the case may be, that any or all of those paragraphs shall not apply to any right of way specified in the notice; and
- (b) any agreement made (whether before or after any of the events mentioned in subparagraph (a) and before or after the coming into force of this Order) between the promoter and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b) which is made with a person in or to whom the right of way is vested or belongs is expressed to have effect also for the benefit of those deriving title from or under that person, it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

### **Open space in the City of Nottingham**

**42.—**(1) The City open space shall not vest in the promoter until the promoter has acquired the City exchange land and, upon a request made by the promoter, the City Council has certified that a scheme for the provision of the City exchange land as open space has been implemented to its satisfaction.

(2) Upon the requirements of paragraph (1) being satisfied, the City exchange land shall vest in the City Council subject to the like rights, trusts and incidents as attached to the City open space and, on the vesting of the City exchange land, the City open space shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

- (a) “the City exchange land” means the land in the City numbered 726, 727 and 728 on the works and land plans and coloured green on the open space and exchange land plans; and
- (b) “the City open space” means the open space comprised in the land in the City shown numbered 716, 724 and 725 on the works and land plans and coloured red on the open space and exchange land plans.

### **Open space in the Borough of Broxtowe**

**43.—**(1) Upon a request made by the promoter, Broxtowe Borough Council may certify that a scheme for the provision of the Broxtowe exchange land as open space has been implemented to its satisfaction.

(2) Upon Broxtowe Borough Council certifying the implementation to its satisfaction of a scheme as described in paragraph (1), the Broxtowe exchange land shall vest in Broxtowe Borough Council subject to the like rights, trusts and incidents as attached to the Broxtowe open space and, on the vesting of the Broxtowe exchange land, the Broxtowe open space shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

- (a) “the Broxtowe exchange land” means the land in the Borough of Broxtowe shown numbered 14 on the works and land plans and hatched green on the open space and exchange land plans; and
- (b) “the Broxtowe open space” means the open space comprised in land in the Borough of Broxtowe shown numbered 26, 32, 33, 37, 42, 66, 262, 504, 507, 510 and 511 on the works and land plans and hatched red on the open space and exchange land plans.

### **Open space in the Borough of Rushcliffe**

**44.**—(1) The Rushcliffe open space shall not vest in the promoter until the promoter has acquired the Rushcliffe exchange land and, upon a request made by the promoter, Rushcliffe Borough Council has certified that—

- (a) the Rushcliffe exchange land is no less in area than the Rushcliffe open space; and
- (b) a scheme for the provision of the Rushcliffe exchange land as open space has been implemented to its satisfaction.

(2) Upon the requirements of paragraph (1) being satisfied, the Rushcliffe exchange land shall vest in Rushcliffe Borough Council subject to the like rights, trusts and incidents as attached to the Rushcliffe open space and, on the vesting of the Rushcliffe exchange land, the Rushcliffe open space shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

- (a) “the operational land” means so much of the land shown numbered 1142 on the works and land plans as is required for the operation, maintenance and use of the authorised tramway following the completion of the construction of Work No.15;
- (b) “the Rushcliffe exchange land” means the land shown numbered 1140, 1141, 1142, 1143, 1144 and 1145 on the works and land plans and cross-hatched green on the open space and exchange land plans, with the exclusion of the operational land; and
- (c) “the Rushcliffe open space” means the open space comprised in land in the Borough of Rushcliffe shown numbered 1042 on the works and land plans and cross-hatched red on the open space and exchange land plans.

### **Time limit for exercise of powers of acquisition**

**45.**—(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 30 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 31 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The power conferred by article 36 (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 promoter from remaining in possession of

land in accordance with article 36 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 THE AUTHORISED TRAMWAY

#### Power to operate and use authorised tramway

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

(2) Subject to paragraph (4) and article 55 (powers of disposal, agreements for operation, etc.), the promoter shall, for the purpose of operating the authorised tramway, have the exclusive right—

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

(3) Any person who, without the consent of the promoter or other reasonable excuse, uses the apparatus mentioned in paragraph (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 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 the provisions of this Order except to the extent that the exercise of the right is constrained by the presence of the apparatus.

(5) The authorised tramway and the other authorised works may be operated and used under the powers conferred by this article regardless of anything contained in or done pursuant to section 53 of the Nottingham Inclosure Act, or Part 1 of, or Schedule 2 to, the Commons Act 2006<sup>(32)</sup>.

#### Power to charge fares

**47.**—(1) The promoter may demand, take and recover or waive such charges for carrying passengers or goods on the authorised tramway, or for any other services or facilities provided in connection with the authorised tramway, as it thinks fit.

(2) The promoter may enter into and carry into effect agreements with other persons providing public passenger transport services with regard to the issue of tickets and the making of through ticketing arrangements or for the purpose of generally co-ordinating the provision of those services with the operation of the authorised tramway.

(3) In this article “public passenger transport service” has the meaning given by section 63(10)(a) of the Transport Act 1985<sup>(33)</sup>.

#### Removal of obstructions

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

- (a) any person by whom the vehicle was put or left so as to become an obstruction to tramcars;
- or

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<sup>(32)</sup> 2006 c. 26

<sup>(33)</sup> 1985 c. 67.

(b) any person who was the owner of the vehicle at that time unless that person shows that, at that time, the person was not concerned in or aware of the vehicle being so put or left.

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

(a) any person who was in charge of the vehicle at the time when the load fell from it; or

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

(3) For the purposes of this article the owner of a vehicle shall be taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of the vehicle at any time, it shall be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicles Excise and Registration Act 1994<sup>(34)</sup>.

(4) A person who, wilfully and without lawful excuse—

(a) interferes with or removes the authorised tramway or any part of the authorised tramway or the works connected with it;

(b) places or throws materials or objects of any kind on any part of the authorised tramway; or

(c) does anything which obstructs any tramcar using the authorised tramway, whether or not such obstruction endangers the lives of any person in the tramcar,

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

### **Traffic signs**

**49.**—(1) The promoter may, for the purposes of, or in connection with the construction or operation of, the authorised tramway, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State on any street in which the authorised tramway is laid or which gives access to such a street, or on any street in connection with any instrument made under article 50 (traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) The promoter—

(a) shall consult with the traffic authority as to the placing of signs; and

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

(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 promoter 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 any street in which the authorised tramway is laid or which gives access to such a street shall consult with the promoter as to the placing of any traffic sign which would affect the operation of the authorised tramway.

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

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(34) 1994 c. 22.

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

### **Traffic regulation**

**50.**—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent shall not be unreasonably withheld, the promoter may, for the purposes of the authorised tramway—

- (a) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles in the manner specified in Part 1 of Schedule 10 (traffic regulation) on those roads specified in column (2) and along the lengths and between the points specified in column (3) of that Part of that Schedule;
- (b) authorise the use as a parking place in the manner specified in Part 2 of Schedule 10 of those roads specified in column (2) and along the lengths, between the points and to the extent specified in column (3) of that Part of that Schedule;
- (c) make provision as to the direction of vehicular traffic in the manner specified in Part 3 of Schedule 10 on the roads specified in column (2) and along the lengths, between the points and as respects direction to the extent specified in column (3) of that Part of that Schedule; and
- (d) permit or prohibit vehicular access in the manner specified in Part 4 of Schedule 10 to those roads specified in column (2) and along the lengths, between the points and as respects direction to the extent specified in column (3) of that Part of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, which consent shall not be unreasonably withheld, the promoter may, in so far as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance or operation of the authorised tramway—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the promoter.

(3) The powers conferred by paragraphs (1) and (2) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised tramway for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (1) or (2) may have effect both before and after the expiry of that period.

(4) The promoter shall consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The promoter shall not exercise the powers conferred by paragraph (1) or (2) unless it has—

- (a) given not less than—
  - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
  - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

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 specify in writing within 28 days of its receipt of notice of the promoter's intention in the case of sub-paragraph (a) (i), or within 7 days of its receipt of notice of the promoter's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by the promoter under paragraph (1) or (2) shall—

- (a) have effect as if duly made by, as the case may be—

- (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
- (ii) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 10) to which the prohibition, restriction or other provision is subject; and

- (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004<sup>(35)</sup> (road traffic contraventions subject to civil enforcement).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the promoter from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the authorised tramway for public use.

(8) Before exercising the powers of paragraph (2) the promoter shall consult such persons as it considers necessary and appropriate and shall take into consideration any representations made to it by any such person.

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

(10) The powers conferred on the promoter by this article with respect to any road shall have effect subject to any agreement entered into by the promoter with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

### **Power to lop trees overhanging authorised tramway**

**51.**—(1) The promoter may fell or lop any tree or shrub near any part of the authorised tramway, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised tramway or any apparatus used for the purposes of the authorised tramway; or
- (b) from constituting a danger to passengers or other persons using the authorised tramway.

(2) In exercising the powers in paragraph (1), the promoter 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.

**Trespass on the authorised tramroad**

52.—(1) Any person who—

- (a) trespasses on the authorised tramroad; or
- (b) trespasses upon any land of the promoter in dangerous proximity to the authorised tramroad or to any electrical or other apparatus used for or in connection with the operation of the authorised tramroad,

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

(2) No person shall be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass upon the authorised tramroad was clearly exhibited and maintained at the stop on the authorised tramway nearest the place where the offence is alleged to have been committed.

**Power to make byelaws**

53.—(1) The promoter may make byelaws regulating—

- (a) the use and operation of, and travel on, the authorised tramway;
- (b) the maintenance of safety and order on the authorised tramway, on any street along which the authorised tramway is laid and on tramway premises or other facilities provided in connection with the authorised tramway, where necessary to ensure the safe operation and use of the authorised tramway; and
- (c) the conduct of all persons, including employees of the promoter, while on the authorised tramway or on tramway premises, or which could affect the safe operation and use of the authorised tramway.

(2) In particular, byelaws made under this article may make provision—

- (a) with respect to tickets issued for travel on the authorised tramway (in whatever form), the payment of fares and charges and the evasion of payment of fares and charges;
- (b) with respect to interference with, or obstruction of, the operation of the authorised tramway or other facilities provided in connection with the authorised tramway;
- (c) with respect to access to and the carriage, use or consumption of anything on tramway premises;
- (d) with respect to the prevention of nuisances on tramway premises;
- (e) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within tramway premises;
- (f) for the safe custody and re-delivery or disposal of any property accidentally left on tramway premises and for fixing the charges made in respect of any such property;
- (g) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the authorised tramway or on tramway premises; and
- (h) for regulating (but not requiring) the maintenance of, or the carrying out of works to, the facades of buildings to which any equipment has been attached pursuant to article 19 (attachment of equipment to buildings), or which front onto the authorised tramway, where necessary to ensure the safe operation and use of the authorised tramway.

(3) Byelaws made 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.

(4) Without affecting the taking of proceedings for an offence included in byelaws by virtue of paragraph (3), if the contravention of, or failure to comply with, any byelaw made under this article is attended with danger or annoyance to the public, or hindrance to the promoter in the operation of the authorised tramway, the promoter may summarily take action to obviate or remove the danger, annoyance or hindrance.

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

(6) At least 28 days before applying for any byelaws to be confirmed under this article, the promoter shall publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the times 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.

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

- (a) be kept at the principal office of the promoter and shall at all reasonable hours be open to public inspection without payment; and
- (b) be made available on the promoter's website (if any).

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

(9) 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.

(10) The Secretary of State may charge the promoter such fees in respect of any byelaws submitted for confirmation under this article as the Secretary of State may consider appropriate for the purposes of defraying any administrative expenses incurred in connection with the confirmation of those byelaws.

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

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

- (a) that the byelaws were made by the promoter;
- (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 rebuttable evidence of the facts stated in the certificate.

(13) From the beginning of the day on which, pursuant to article 83(2) (repeals of the 1994 Act), the enactments within the 1994 Act specified in Part 2 of Schedule 15 (repeals of the 1994 Act) are repealed, and despite the repeal of section 62 of the 1994 Act by that article, the byelaws then applying to Line One and made under that section shall continue to apply to Line One until such time as they are revoked or amended by byelaws made by the promoter under this article.

(14) From the beginning of the day on which the authorised works are first brought into public use, the byelaws then applying to Line One by virtue of paragraph (13) shall be deemed to apply to

the authorised tramway as well as to Line One, as if they had been made under this article and they shall continue to apply to the authorised tramway until such time as they are revoked or amended by byelaws made by the promoter under this article.

#### **Power to contract for police services**

**54.**—(1) The promoter may enter into any agreement with a police authority and its chief officer for the police force maintained by that authority to provide policing services for or in connection with the authorised tramway, including at any tramway premises.

(2) Any such agreement may provide for—

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

(3) In this article—

- (a) “chief officer” means a chief officer of police within the meaning of the Police Act 1996<sup>(36)</sup> 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<sup>(37)</sup>.

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

**55.**—(1) The promoter may, with the consent of the Secretary of State, enter into agreements—

- (a) to transfer, charge or otherwise dispose of to another person (“the transferee”) any interest of the promoter in the authorised works or the promoter’s right to construct, maintain, use or operate the authorised works; or
- (b) to grant to another person (“the lessee”) for a period agreed between the promoter and the lessee any interest of the promoter in the authorised works or the promoter’s right to construct, maintain, use or operate the authorised works; and
- (c) that are connected with or consequential on any agreement entered into under subparagraph (a) or (b).

(2) Any agreement referred to in paragraph (1) may provide—

- (a) for any matters that are connected with the matters referred to in that paragraph or are consequential on them;
- (b) for the financing or defraying of, or the making of contributions by the promoter or by any other person towards, the cost of constructing, maintaining, using or operating the authorised works; and
- (c) for the transferee, the lessee or any other person to exercise, enjoy or be responsible for any related functions of the promoter, including its functions comprised in this Order, either exclusively or concurrently with the promoter or any other person.

(3) Where an agreement has been made under paragraph (1), references in this Order to the promoter shall include references to the transferee, the lessee or any other person who may exercise, enjoy or be responsible for any related functions of the promoter pursuant to that agreement.

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<sup>(36)</sup> 1996 c. 16.

<sup>(37)</sup> 2003 c. 20.

(4) The exercise of the powers conferred by any enactment by any person in pursuance of any agreement made under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the promoter.

(5) The promoter may provide to any person in any agreement made under paragraph (1), or in connection with or in consequence of any such agreement, or otherwise in connection with the design, construction, financing, maintenance, use or operation of the authorised works, such guarantees, indemnities or other forms of security as it considers to be necessary or appropriate.

(6) In this article—

- (a) “functions” means statutory and other powers, duties, rights, interests and obligations; and
- (b) references to the authorised works shall be read as including references to any land held in connection with the authorised works.

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

**56.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised tramway or the right to operate the same, and
- (b) any agreement entered into by the promoter with any person for the construction, maintenance, use or operation of the authorised tramway, 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 affect the operation of any agreement to which this article applies.

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

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

### **Tramcars deemed public service vehicles**

**57.**—(1) On such day as may be appointed under paragraph (2), regulations made, or having effect as if made, under section 24, 25 or 60(1)(j) or (k) of the Public Passenger Vehicles Act 1981<sup>(38)</sup> shall have effect as if the tramcars used on the authorised tramway for the carriage of passengers were public service vehicles used in the provision of a local service within the meaning of the Transport Act 1985<sup>(39)</sup>.

(2) The promoter may by resolution appoint a day for the purpose of any regulation mentioned in paragraph (1), the day so appointed being fixed in accordance with paragraph (3).

(3) The promoter shall publish in a newspaper circulating in its area, notice—

- (a) of the passing of any such resolution and of the day fixed by the resolution; and

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<sup>(38)</sup> 1981 c. 14.

<sup>(39)</sup> 1985 c. 67.

(b) of the general effect of the enactments for the purposes of which the day has been fixed, and the day so fixed shall not be earlier than the expiration of 28 days from the date of the publication of the notice.

(4) A photostatic or other reproduction certified by a person duly authorised by the promoter to be a true reproduction of a page, or part of a page, of any newspaper bearing the date of its publication and containing the notice mentioned in paragraph (3) shall be evidence of the publication of the notice and of the date of publication.

### **Substitute road services**

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

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

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

## **PART 5**

### **PENALTY FARES**

#### **Interpretation of Part 5**

**59.**—(1) In this Part unless the context otherwise requires—

“authorised person” means, in relation to any purpose, a person authorised for that purpose by the promoter;

“fare ticket” means a ticket authorising the person in respect of whom it is issued to travel on a tramcar;

“general travel authority” means any permit, other than a fare ticket, authorising the person in respect of whom it is issued to travel on a tramcar;

“passenger” means a person travelling on a tramcar;

“penalty fare” means a penalty fare payable pursuant to article 61 (penalty fares);

“the penalty fare provisions” means articles 61 (penalty fares) to 66 (exclusion of double liability); and

“tramway stop” means a station or other regular stopping place on the authorised tramway at which passengers may get on or off tramcars.

(2) Any reference in this Part to a passenger producing a fare ticket or general travel authority on being required to do so by an authorised person is a reference to producing, when so required, a fare ticket or general travel authority which, either by itself or together with any other document produced by the passenger at the same time, is valid for the journey made by the passenger.

(3) For the purposes of paragraph (2), a passenger who is on a tramcar shall be taken to have made a journey ending at the next scheduled tramway stop.

#### **Operation of Part 5**

**60.**—(1) The penalty fare provisions shall have effect in relation to travel on any tramcar on and after such day as the Secretary of State may specify.

(2) On the application of the promoter, or if the Secretary of State considers on reasonable grounds that the promoter is not complying with the requirements of this Part, the Secretary of State may provide that the penalty fare provisions shall cease to have effect on and after such day as the Secretary of State may specify.

(3) Paragraph (2) does not affect the power of the Secretary of State to specify further days on and after which the penalty fare provisions shall have effect.

(4) Any day specified by the Secretary of State for the purposes of paragraph (1) or (2) shall be published in a newspaper circulating in the promoter's area not later than one week before that date.

(5) No day may be specified under paragraph (1) except at the request of the promoter.

### **Penalty fares**

**61.**—(1) If a passenger, on being required to do so by an authorised person, fails to produce a fare ticket or a general travel authority, the passenger shall be liable to pay a penalty fare if required to do so by an authorised person.

(2) A passenger shall not be liable to pay a penalty fare if, at any time when fare tickets are generally made available for sale at tramway stops or on tramcars, there were no facilities for the sale of the necessary ticket for the passenger's journey at the tramway stop where, and the time when, the passenger boarded the tramcar, or on the tramcar.

(3) Paragraphs (4) and (5) have effect with respect to the burden of proof, in any action for the recovery of a penalty fare under this article, so far as concerns the question whether the facts of the case fall within paragraph (2).

(4) In any case where the passenger has provided the authorised person with a relevant statement in due time it shall be for the authorised person to show that the facts of the case do not fall within paragraph (2), and in any other case it shall be for the passenger to show that the facts of the case fall within that provision.

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

- (a) a relevant statement is a statement giving an explanation of the passenger's failure to produce a fare ticket or general travel authority, together with any information as to the passenger's journey relevant to that explanation (including, in every case, an indication of the tramway stop where the passenger boarded the tramcar); and
- (b) a statement is provided in due time if it is provided when the passenger is required to produce a fare ticket or general travel authority, or at any later time before the expiration of the period of 21 days beginning with the day following the day on which the journey is completed.

### **Amount of penalty fare**

**62.**—(1) Subject to paragraph (2), a penalty fare shall be £20 and shall be payable to the promoter before the expiration of the period of 21 days beginning with the day following the day on which the journey in respect of which it is payable is completed.

(2) The promoter may from time to time vary the amount of the penalty fare provided that—

- (a) the consent of the Secretary of State is obtained in writing to such a variation; and
- (b) a notice stating the amount of the penalty fare as so varied is published in a newspaper circulating in the promoter's area not later than 28 days before the day on which the penalty fare, as so varied, is to take effect.

**Document to be issued in connection with penalty fare requirement**

**63.**—(1) An authorised person who requires a passenger to pay a penalty fare shall give the passenger either a receipt for the payment of the amount of the penalty (where the passenger makes that payment to the authorised person) or a notice stating that the requirement has been made.

(2) A receipt or notice given under paragraph (1) shall specify the passenger's destination on the tramcar on which the passenger is travelling when required to pay the penalty fare, and shall operate as an authority to the passenger to continue to that destination.

(3) For the purposes of paragraph (2), the passenger's destination shall (unless only one destination is possible in the circumstances) be taken to be the destination stated by the passenger or, in default of any statement by the passenger identifying the passenger's destination, such destination as may be specified by the authorised person.

**Notice of penalty fare provisions**

**64.**—(1) It shall be the duty of the promoter to secure that a warning notice meeting the requirements of paragraph (2) is posted—

- (a) at every tramway stop, in such a position as to be readily visible to prospective passengers; and
- (b) in every tramcar, in such a position as to be readily visible to passengers travelling on that tramcar.

(2) A warning notice posted pursuant to paragraph (1) shall (however expressed) indicate the circumstances (as provided in article 61 (penalty fares)) in which passengers may be liable to pay a penalty fare and state the amount of the penalty fare.

**Supplementary provisions**

**65.**—(1) A passenger who is required to pay a penalty fare shall, unless the passenger pays, immediately and in cash, the amount of the penalty fare to an authorised person requiring such payment, give to that authorised person, if that person requires the passenger to do so, the name and address of the passenger; and any passenger failing to do so shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) Where an authorised person requires any passenger to do anything pursuant to any provision of this Order the authorised person shall, if so requested by the passenger concerned, produce to that passenger a duly authenticated document showing evidence of the authorised person's authority; and a requirement by an authorised person shall be of no effect if, as respects that requirement, the authorised person fails to comply with this paragraph.

**Exclusion of double liability**

**66.**—(1) Where a passenger has become liable to pay a penalty fare in respect of any journey (referred to below as "the relevant journey"), no proceedings may be brought against that passenger for either of the offences specified in paragraph (2) before the end of the period mentioned in article 62(1) (amount of penalty fare); and no such proceedings may be brought after the end of that period if—

- (a) the passenger has paid the penalty fare to the promoter before the end of that period; or
  - (b) an action has been brought against the passenger for the recovery of that fare.
- (2) The offences mentioned in paragraph (1) are—

- (a) any offence under byelaws made under article 53 (power to make byelaws) involving a failure to obtain or produce a fare ticket or general travel authority for the relevant journey; and
  - (b) any offence under section 25(3) of the Public Passenger Vehicles Act 1981<sup>(40)</sup> of contravening or failing to comply with any provision of regulations for the time being having effect by virtue of that section by failing to pay the fare properly payable for the relevant journey or any part of it.
- (3) If proceedings are brought against any such passenger for any such offence the liability to pay the penalty fare shall cease and, if it has been paid, the promoter shall be liable to repay to the passenger an amount equal to the amount of that fare.

## PART 6

### PROTECTIVE PROVISIONS

#### **Statutory undertakers, etc.**

67. The provisions of Schedule 11 (provisions relating to statutory undertakers, etc.) shall have effect.

#### **Minerals**

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

#### **Saving for highway authorities**

69. Nothing in this Order shall affect any power of a highway authority to widen, alter, divert or improve any highway along which the authorised street tramway is laid.

#### **Arrangements with highway authorities**

70.—(1) The following provisions shall, unless otherwise agreed in writing between the promoter and the highway authority concerned, have effect.

(2) In this article—

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

“highway operations” means the construction or non-routine maintenance of any part of the authorised works which will involve interference with a highway or the traffic in a highway, any temporary stopping up, alteration or diversion of a highway, any occupation of the surface of a highway or any placing of equipment or apparatus in a highway; and

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

(3) Wherever in this article 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 impose in the interests of safety and

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(40) 1981 c. 14.

in order to minimise inconvenience to persons using the highway, but shall not be unreasonably withheld.

(4) Prior to seeking approval under paragraph (6), the promoter 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 tramway with other forms of highway traffic and, within 28 days of being requested in writing by the promoter to do so, the highway authority shall provide the promoter with its opinion on the subject.

(5) Prior to seeking approval under paragraph (6), the promoter shall consult the highway authority concerned as to the design of any lighting for tramway stops, the design and positioning of any poles and brackets required for overhead line equipment and the design of any traffic signalling system for the authorised tramway.

(6) Without affecting 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 promoter 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.

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

(8) In the event of any disapproval of plans by a highway authority under this paragraph, the promoter 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.

(9) In submitting plans under paragraph (6), the promoter shall—

- (a) ensure, so far as reasonably practicable, that the design of any lighting for tramcar stops 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 signalling system for the authorised tramway is fully compatible with traffic signalling for other traffic users whilst achieving appropriate priority signalling for tramcars using the authorised tramway wherever practicable.

(10) 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 promoter regarding the highway operations without the prior consent in writing of the promoter but 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 paragraph.

(11) To facilitate liaison with the promoter, the highway authority concerned shall provide so far as is reasonably practicable a representative to attend meetings arranged by the promoter 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 difference between the promoter 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 promoter 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 any connected apparatus, 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 or the access to any such property or work.

(14) The promoter 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 promoter shall, if reasonably so required by the highway authority, provide and maintain during such time as the promoter 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 2002(41) in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

(16) The promoter 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 promoter 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 any connected apparatus 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 promoter, its contractors, servants or agents.

(18) Unless otherwise agreed between the parties any difference arising between the promoter and the highway authority under this article (other than a difference as to its meaning or construction) shall be determined by arbitration under article 82 (arbitration).

### **For protection of the Environment Agency**

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

(2) In this article—

“construction” shall include execution, placing and maintenance and “construct” and “constructed” shall be construed accordingly;

“damage” shall include scouring, erosion and environmental damage and “damaged” shall be construed accordingly;

“drainage work” shall mean any watercourse and includes any land which is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“the fishery” shall mean any waters containing fish and fish in, or migrating to or from, such waters and the spawn, habitat or food of such fish;

“plans” shall include sections, drawings, specifications and method statements; and

“specified work” shall mean so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a watercourse or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
  - (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
  - (c) cause obstruction to the free passage of fish or damage to any fishery; or
  - (d) affect the conservation, distribution or use of water resources.
- (3)
- (a) Before beginning to construct any specified work, the promoter shall submit to the Agency plans of the work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.
  - (b) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph (13).
  - (c) Any approval of the Agency required under this paragraph—
    - (i) shall not be unreasonably withheld;
    - (ii) shall be deemed to have been given if it is neither given nor refused in writing within 56 days of the submission of the plans for approval and in the case of a refusal, accompanied by a statement of the grounds of refusal; and
    - (iii) may be given subject to such reasonable conditions or requirements as the Agency may impose—
      - (a) for the protection of any drainage work;
      - (b) for the protection of the fishery;
      - (c) for the protection of water resources;
      - (d) for the prevention of flooding or pollution; or
      - (e) in the discharge of its environmental and recreational duties.
- (4) In particular, the conditions or requirements which the Agency may make under paragraph (3) include conditions requiring the promoter at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—
- (a) to safeguard any drainage work against damage; or
  - (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work.
- (5)
- (a) Any specified work, and all protective works required by the Agency under paragraph (4), shall be constructed—
    - (i) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under this article; and
    - (ii) to the reasonable satisfaction of the Agency,
 and the Agency shall be entitled by its officer to watch and inspect the construction of such works.
  - (b) The promoter shall give to the Agency not less than 14 days' notice in writing of the promoter's intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

- (c) If any part of the works comprising a structure in, over or under a drainage work is constructed otherwise than in accordance with the requirements of this article, the Agency may by notice in writing require the promoter, at the promoter's own expense, to comply with the requirements of this article or (if the promoter so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.
  - (d) Subject to sub-paragraph (e) if, within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (c) is served upon the promoter, it has failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the promoter.
  - (e) In the event of any dispute as to whether sub-paragraph (c) is properly applicable to any work in respect of which a notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in an emergency exercise the powers conferred by sub-paragraph (d) until the dispute has been finally determined.
- (6)
- (a) The promoter shall maintain in good repair and condition and free from obstruction any culvert or any structure designed to contain or divert the flow of any watercourse situated within any land held for the purposes of or in connection with the authorised tramway and constructed under the powers conferred by this Order.
  - (b) If any such work which the promoter is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the promoter to repair and restore the work, or any part of it, or (if the promoter so elects and the Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.
  - (c) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served under sub-paragraph (b) on the promoter, the promoter has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter made reasonably expeditious progress towards their implementation, the Agency may do anything necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the promoter.
  - (d) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (b), the Agency shall not, except in a case of an emergency, exercise the powers conferred by sub-paragraph (c) until the dispute has been finally determined.
  - (e) Nothing in this paragraph shall have the effect of requiring the promoter to carry out works of maintenance in respect of any culvert or structure which the Agency or any other person is liable to maintain.
- (7) If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that work is otherwise damaged, such impairment or damage shall be made good by the promoter to the reasonable satisfaction of the Agency and if the promoter fails to do so, the Agency may make good the same and recover from the promoter the expense reasonably incurred by it in so doing.

(8)

- (a) The promoter shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in any fishery during the construction of any specified work.
- (b) If by reason of—
- (i) the construction of any specified work; or
  - (ii) the failure of any such work,
- damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the promoter requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.
- (c) If, within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to the fishery, the promoter fails to take such steps as are described in sub-paragraph (b), the Agency may take those steps and may recover from the promoter the expense reasonably incurred by it in doing so.
- (d) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the promoter the reasonable cost of so doing provided that a notice specifying those steps is served on the promoter as soon as is reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.
- (9) The promoter shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—
- (a) in the examination or approval of plans under this article; and
  - (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this article.
- (10)
- (a) Without affecting the other provisions of this article, the promoter shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss, which may be made or taken against, or recovered from or incurred by the Agency by reason of—
    - (i) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
    - (ii) any damage to the fishery;
    - (iii) any raising or lowering of the water table in land adjoining the works authorised by this Order or any sewers, drains and watercourses;
    - (iv) any flooding or increased flooding of any such lands; or
    - (v) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by, or results from, the construction of any of the works or any act or omission of the promoter, its contractors, agents or employees whilst engaged upon the work.
  - (b) The Agency shall give to the promoter reasonable notice of any such claim or demand and no settlement or compromise of it shall be made without the agreement of the promoter, which shall not be unreasonably withheld.
- (11) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions

or award of an arbitrator, shall not relieve the promoter from any liability under the provisions of this article.

(12) For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991<sup>(42)</sup> (abstraction and impounding of water), as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this article with respect to such construction shall be deemed also to constitute an impounding licence under that Chapter, and the promoter shall not be obliged to serve any notice which would otherwise be required by section 30 of that Act (which relates to the construction of boreholes and similar works in respect of which a licence is not required).

(13) Any dispute arising between the promoter and the Agency under this article (other than a difference as to its meaning or construction) shall, if the parties agree, be determined by arbitration under article 82 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the promoter or the Agency, after notice in writing by one to the other.

#### **For protection of electricity, gas, water and sewerage undertakers**

72. The provisions of Schedule 12 (for protection of electricity, gas, water and sewerage undertakers) shall have effect.

#### **For protection of British Waterways Board**

73. The provisions of Schedule 13 (for protection of British Waterways Board) shall have effect.

#### **For protection of railway interests**

74. The provisions of Schedule 14 (for protection of railway interests) shall have effect.

#### **For protection of Borough Councils**

75.—(1) The following provisions of this article shall, unless otherwise agreed in writing between the promoter and the appropriate Council, have effect.

(2) In this article “the appropriate Council” means—

- (a) the Council of the Borough of Broxtowe, in relation to any authorised work constructed in the area of that council; or
- (b) the Council of the Borough of Rushcliffe, in relation to any authorised work constructed in the area of that council.

(3) Before commencing to construct any scheduled work the promoter shall consult the appropriate Council about—

- (a) the programme for the construction of that work; and
- (b) the land within the Order limits to be occupied and used by the promoter as temporary working sites for the purpose of such construction, the period for which and the manner in which each site will be used and the steps to be taken by the promoter in order to mitigate any injury to amenity.

(4) The promoter shall consult the appropriate Council as to the proposed manner and method of disposing of any soil or waste material resulting from the carrying out of any operation in connection with construction of the authorised works.

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(42) 1991 c. 57.

## PART 7

### MISCELLANEOUS AND GENERAL

#### Street and market traders

76.—(1) Where the promoter considers that the carrying on within any part of a street within the Order limits by the holder of a public markets licence, a street trader’s licence or a street trading consent, of the trading permitted by that licence or consent, would prevent or materially impede the construction or maintenance of the authorised works or the safe operation of the authorised tramway, the promoter may—

- (a) revoke that licence or consent, as the case may be, if it only permits trading in a street in which the authorised tramway is or is to be laid or in any street having a junction with such a street; or
- (b) with the consent of the Council, vary the principal or the subsidiary terms of that licence or the conditions of that consent, as the case may be.

(2) The principal or subsidiary terms of a street trader’s licence or the conditions of a street trading consent may be varied by the promoter under paragraph (1) so that the licence or consent, as the case may be, permits trading in a street which is beyond a street in which the authorised tramway is or is to be laid or any street having a junction with such a street.

(3) The promoter shall serve written notice of any such revocation or variation on the licence-holder or the holder of the consent in question not less than 28 days before the revocation or variation is to take effect.

(4) Where the promoter revokes a street trader’s licence under this article, the Council may remit or refund, as it considers appropriate, the whole or a part of—

- (a) any fee paid for the grant or renewal of the licence; or
- (b) any charges recoverable by it under paragraph 9(6) of Schedule 4 to the 1982 Act.

(5) Where the promoter revokes a public markets licence or a street trading consent under this article, the Council may remit or refund, as it considers appropriate, the whole or a part of any fee paid for the grant or renewal of the licence or consent.

(6) No legal proceedings whatever may be taken against the Council in relation to any consent given under paragraph (1)(b) except where the Council or any employee, contractor or agent of the Council has acted negligently in giving that consent.

(7) The promoter shall pay compensation to any person who suffers any loss or damage from the exercise of the powers conferred by paragraph (1) and in assessing the amount of any such compensation there shall be taken into account any money paid to that person pursuant to paragraph (4) or (5).

(8) Any dispute as to a person’s entitlement to compensation under paragraph (7), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(9) In this article—

“the 1982 Act” means the Local Government (Miscellaneous Provisions) Act 1982(43);

“the Council” means Broxtowe Borough Council in relation to a public markets licence, a street trader’s licence or a street trading consent applying to its area, Rushcliffe Borough Council in relation to such a licence or consent applying to its area, and the City Council in relation to such a licence or consent applying to its area, and in each case includes the Council’s employees, agents and contractors;

(43) 1982 c. 30.

“public markets licence” means a licence to trade at any street market granted to any person by the Council pursuant to its rights under any Royal Charter or enactment;

“street trading consent” means a consent to trade in a street granted to any person by the Council pursuant to Schedule 4 to the 1982 Act; and

“street trader’s licence” means a licence to trade in a street granted to any person by the Council pursuant to Schedule 4 to the 1982 Act or any other enactment.

### **Disclosure of confidential information**

77. A person who—

- (a) enters a manufactory, workshop or workplace in pursuance of the provisions of article 22 (safeguarding works to buildings) or article 25 (power to survey and investigate land, etc.); and
- (b) discloses to any person any information obtained pursuant to paragraph (a) and 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 that person’s performance of a duty in connection with the purposes for which the person was authorised to enter the land.

### **Defence to proceedings in respect of statutory nuisance**

78.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(44)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974<sup>(45)</sup>; or
- (b) that the nuisance is a consequence of the operation or maintenance of the authorised tramway and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974, namely—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

shall not apply where the consent relates to the use of premises by the promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article do not affect any rule of common law having similar effect.

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<sup>(44)</sup> 1990 c. 43.

<sup>(45)</sup> 1974 c. 40.

### **Certification of plans, etc.**

**79.** The promoter shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the works and land plans, the open space and exchange land plans and the traffic regulation and rights of way plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, the works and land plans, the open space and exchange land plans and the traffic regulation and rights of way plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(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<sup>(46)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person 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, the last known address of that person 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 the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person 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) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission, the requirement shall be taken to be fulfilled only where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document, the sender shall provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

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(46) 1978 c. 30.

(b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

### **No double recovery**

**81.** 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, or under two or more different provisions of this Order.

### **Arbitration**

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

### **Repeals of the 1994 Act**

**83.—(1)** The enactments within the 1994 Act specified in Part 1 of Schedule 15 (repeals of the 1994 Act) are repealed.

(2) Except to the extent that they apply to the specified works, the enactments within the 1994 Act specified in Part 2 of Schedule 15 shall be repealed on the day on which Line One first begins to be operated pursuant to an agreement made under article 55 (powers of disposal, agreements for operation, etc.).

(3) The enactments within the 1994 Act specified in Part 2 of Schedule 15 that apply to the specified works shall be repealed on the day on which regular revenue-earning operations commence on the authorised tramway.

(4) The enactments within the 1994 Act specified in Part 3 of Schedule 15 shall be repealed on the day after the day on which the promoter has published a notice, certifying that all of the land and rights in land which may be acquired under the 1994 Act have been vested in the promoter (by whatever means), in a newspaper circulating in the vicinity of the land.

(5) This article is subject to article 85 (agreements and undertakings connected with the 1994 Act or the construction or maintenance of Line One).

(6) In this article “the specified works” means the following works authorised by the 1994 Act—

- (a) Work Nos. 3A and 3B;
- (b) Work No.6;
- (c) Work No.6B; and
- (d) Work No.7,

together with all necessary works and conveniences connected with those works.

### **Application to Line One**

**84.** Schedule 16 (which provides for the application of certain provisions of this Order to Line One and makes other provision in relation to Line One) shall have effect.

### **Agreements and undertakings connected with the 1994 Act or the construction or maintenance of Line One**

**85.** Schedule 17 (which relates to certain agreements and undertakings connected with the 1994 Act or the construction or maintenance of Line One) shall have effect.

### **Acquisition of land required for the further development or extension of the authorised tramway and Line One**

**86.** Without limiting the scope of the promoter's power to acquire land by agreement under section 120 of the Local Government Act 1972<sup>(47)</sup> and section 26 of the Land Compensation Act 1973<sup>(48)</sup>, the promoter may acquire by agreement any land in its area which, in its opinion—

- (a) is likely to be required for the further development or extension of the authorised tramway and Line One; or
- (b) by reason of published proposals indicating that it might be so required, is a hereditament in respect of which a valid blight notice could have been served on the promoter under section 150 or 161 of the 1990 Act if it were land of the description specified in paragraph 21 of Schedule 13 to that Act.

### **Greater Nottingham Light Rapid Transit Advisory Committee**

**87.**—(1) The promoter shall establish a body, to be known as the Greater Nottingham Light Rapid Transit Advisory Committee (in this article referred to as “the Committee”).

(2) The purpose of the Committee is to advise the promoter on the operation of the authorised tramway and Line One (in this article referred to together as “the Nottingham Express Transit system”) and except in a case of special urgency where it is not reasonably practicable to do so, the promoter shall consult the Committee on the operation of the Nottingham Express Transit system.

(3) The members of the Committee shall be appointed by the promoter, and shall include representatives of users of the Nottingham Express Transit system and members of the City Council and the County Council. The Committee may co-opt onto the Committee such representatives of any person given a right to operate the Nottingham Express Transit system pursuant to an agreement made under article 55 (powers of disposal, agreements for operation, etc.) as the Committee sees fit.

(4) Without affecting any member of the Committee's right to resign as a member of the Committee at any time by giving notice in writing to the promoter, the term of office of a member of the Committee shall extend as follows—

- (a) in the case of a member who is a member of the City Council or the County Council, from the date of that member's appointment until the end of the relevant council's period of administration or, if earlier, the date on which that member ceases to be a member of the council concerned; or
- (b) in the case of any other member, for three years from the date of that member's appointment,

and, on ceasing to hold office pursuant to this paragraph, a member of the Committee shall be eligible for re-appointment as a member of the Committee.

(5) The Committee may determine its own quorum and procedure and shall appoint its Chair.

(6) It shall be the duty of the Committee to consider representations made to it by members of the public regarding the operation of the Nottingham Express Transit system.

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(47) 1972 c. 70.

(48) 1973 c. 26.

(7) The Committee may at any time refer or make representations or recommendations to the promoter regarding the operation of the Nottingham Express Transit system, whether or not the Committee has been consulted on the matter by the promoter.

(8) The promoter shall take into consideration any matter, recommendation or representation which may from time to time be referred or made to it by the Committee, whether or not the Committee has been consulted by the promoter on the matter, recommendation or representation so referred or made.

(9) When so requested by the Committee, the promoter shall give its reasons in writing to the Committee for disagreeing with any recommendation or representation of the Committee.

(10) The promoter shall provide the Committee with accommodation and pay all its reasonable secretarial and administration costs.

(11) In this article references to the operation of the authorised tramway, Line One and the Nottingham Express Transit system include references to matters affecting their operation.

### **Existing local railway legislation**

**88.**—(1) Subject to paragraph (2), any local enactment by which any railway within or adjacent to the Order limits was authorised, including the Manchester, Sheffield and Lincolnshire Railway (Extension to London &c.) Act 1893(49), shall have effect subject to the provisions of this Order.

(2) Paragraph (1) shall not apply to any local enactment in so far as that enactment authorises any railway on land owned or occupied by Network Rail Infrastructure Limited unless, in accordance with Schedule 14 (for protection of railway interests)—

- (a) Network Rail Infrastructure Limited transfers or grants to the promoter; or
- (b) the promoter acquires,

any part of that land, or an interest in or easement or other right over it, for the purposes of or in connection with the authorised tramway.

Signed by authority of the Secretary of State

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

19th May 2009 9