
STATUTORY INSTRUMENTS

2009 No. 1300

The Nottingham Express Transit System Order 2009

PART 6

PROTECTIVE PROVISIONS

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⁽¹⁾ (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.

(1) 1991 c. 57.

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Commencement Information

II Art. 71 in force at 9.6.2009, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Nottingham Express Transit System Order 2009, Section 71.