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STATUTORY INSTRUMENTS

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**2009 No. 1300**

**The Nottingham Express Transit System Order 2009**

**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>(1)</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>(2)</sup>.

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(1) 2006 c. 26  
(2) 1985 c. 67.

**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
- (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(3).

(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

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(3) 1994 c. 22.

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.

(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(4) (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>(5)</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>(6)</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

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(5) 1996 c. 16.

(6) 2003 c. 20.

- (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.

(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(7) shall have effect as if the tramcars used on the authorised tramway for the carriage of passengers were

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(7) 1981 c. 14.



public service vehicles used in the provision of a local service within the meaning of the Transport Act 1985(8).

(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

(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.