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STATUTORY INSTRUMENTS

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**2009 No. 1300**

**The Nottingham Express Transit System Order 2009**

**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<sup>(1)</sup>;

“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;

“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>(2)</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>(3)</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

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(1) 1982 c. 30.

(2) 1990 c. 43.

(3) 1974 c. 40.

- (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.

### **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(4) 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.

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(4) 1978 c. 30.

(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
- (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>(5)</sup> and section 26 of the Land Compensation Act 1973<sup>(6)</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.

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(5) 1972 c. 70.

(6) 1973 c. 26.

(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.

(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(7), 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.